

*Wrote a History of the same for some
than Mr. Wilkes*

**Present Constitution, of all Parts of
AND THE
PROTESTANT SUCCESSION**

Vindicated:

In Answer to a late Book

ENTITLED,

The Hereditary Right of the Crown of England
Asserted, &c.

I A. B. do solemnly and sincerely acknowledge and swear, without any Equivocation, mental Evasion, or secret Reservation whatsoever, heartily, willingly, and truly upon the true Faith of a Christian; that I do believe in my Conscience, that the Person pretended to be Prince of Wales, during the Life of the late King James, and upon his Death pretending to be, and taking upon himself the Style and Title of King of England, the Name of James III. hath not any Right or Title whatsoever, to the Crown of this Realm, or any other the Dominions thereunto belonging: And I do renounce, reject, and refuse any Allegiance or Obedience to him: So help me God. Abjuration Oath, Stat. 13. W. 3. C. 6.

If any Person by writing or printing affirm, that the Queen that now is, is not the lawful or rightful Queen of these Realms: Or that the pretended Prince of Wales, &c. hath any right to the Crown of these Realms; or that any other Person or Persons have any Right or Title to the same otherwise than according to the 1. W. & M. Sect. 2. c. 2. & 12. W. 3. c. 2. Or that the Kings or Queens of England, with, and by the Authority of Parliament cannot make Laws, to Limit and Bind the Crown, and the Descendants and Inheritors thereof, every such Person shall be guilty of High-Treason. 4. Anne c 3. 6. Anne c. 7.

— Mille adde catenas

— Non tamen hoc sceleratus vincula Proteus. Hor.

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in Water-Nasser-Row. MDCCLXIV.

THE
PROTESTANT
CONFESSIO

OF THE
CHURCH OF ENGLAND
IN THE
YEAR OF OUR LORD
1549

WE, the undersigned, do hereby certify that the
above is a true and correct copy of the
original as it is now kept in the
archives of the Church of England.
In witness whereof, we have hereunto
set our hands and seals, at London,
this 10th day of June, 1549.

THOMAS CROMWELL, Archbishop of Canterbury,
and the other Bishops and Clergy of the Church of England.

The Introduction.

AS every *Englishman* has an Interest in our *Constitution*, so 'tis every one's Duty to defend it when attacked. A late Writer, in a Book entitled, *The Hereditary Right of the Crown of England asserted, &c.* has craftily endeavoured to undermine it: The Design of this Treatise is to disappoint him, by shewing the Falsity of his Arguments, and the pernicious Tendency of them. Who were the Authors of that Book, or from what Quarter it probably came, I do not intend to inquire. The Circumstance of its being first advertised in the *Gazette*, and several *Manuscripts* quoted therein, which are known to be but in one Study in *England*, give indeed some room for Conjectures: But I am an Enemy only to the Principles, and 'tis not at all to my Purpose to find out whose they are. If a Nation be ruined 'tis no great matter by whom, whether by such as are deceived themselves, or such as know better, but endeavour for their Interest to deceive others. The Consequence is just the same, tho' the Agents are not equally blameable.

When I consider the Miseries of an *Arbitrary Government*, and the Advantages of our excellent *Constitution*; I cannot but admire that any amongst us, should be so much in love with the former, as to endeavour to overturn the latter. But 'tis too plain that such there are, and that they have of late been very indefatigable in their Attempts. To this Purpose are all those Libels of *H-----cks*, *S-----l*, *L-----y*, &c. Wherein the late Revolution, and the Principles on which it was founded, are censured as illegal, and unjust: Tho' to *that Revolution*,

and *these Principles* we owe the Blessings of her *Majesty's* Administration, and those which we hope are secured to Posterity, by the Settlement of the Succession in the House of *Hanover*. 'Tis true indeed, that some of this sort, tho' they daily revile our late *Glorious Deliverer*, yet pretend to be hearty Friends to her *Majesty*. But let us not be amus'd by such shallow Artifices. To condemn the *Revolution*, To dispute the Title of her present *Majesty*, To question the Validity of the Succession, To promote the Interest of the *Pretender*, and To endeavour to introduce *Popery* and *Slavery*, are certainly but one and the same thing. To pretend to assert her *Majesty's* Title, and yet at the same time to deny the Legality of the *Revolution*, on which that Title is founded, is a downright Contradiction: And to endeavour to bring in the *Pretender*, without *Popery* and *Slavery*, is an Absurdity never to be got over. If therefore the Memory of *King William* (who was the Instrument of such great Blessings to this Nation) be every day publickly reflected on: If the Doctrines of *Indefeasible Hereditary Right*, in Opposition to that of her Majesty, be daily printed and dispers'd amongst us: If the Legitimacy of the *Pretender* be defended in Print, and we are frequently told in the publick News Papers, that he is become a sincere Convert, and has in earnest embraced the Religion of the *Church of England*; 'tis easie from such Suggestions, to guess what *some Men* are driving at: And surely at this *Critical Juncture* it behoveth all honest *Englishmen* to be as undaunted in the Defence of their *Liberties*, their *Queen*, their *Country*, and their *Religion*; as the Enemies of all these are bold in their Endeavours to destroy them.

'Tis a great Sign of the Iniquity of the Times, that so many Pamphlets of this sort are daily printed and dispers'd; 'tis a greater still that they are publickly defended; and it would be the greatest of all if they should pass with Impunity,
which

which the Government certainly will never suffer. For tho' two or three Criminals of this Kind may have been allowed to escape unpunish'd; no Consequence can be drawn from thence: When thy become more numerous, the Danger is not the same. However therefore *De Foe* has been so fortunate as to obtain a general Pardon, tho' he printed and publish'd Reasons against the Succession in the House of *Hanover*, which by the 4th and 6th of her present Majesty is declared to be *High Treason*; yet the extraordinary Lenity of the Government in this Instance, ought not certainly to be too far presumed upon; nor ought any one to conclude from this, that Sir. *P. L.* would be permitted with Impunity not only to be in *England*, but to appear publickly at C----- for above a fortnight together. Perhaps *De Foe* may have recanted, or he might have a Friend in some *Great Minister of State*, which latter surely will not be the Case of every one that offends in the like Manner.

Of all the *Treasonable Libels* that have been published by the Enemies of our *Constitution*, the Book of *Hereditary Right*, is certainly the most dangerous; as it strikes at every Branch of the present most happy Establishment. All the Pamphlets against the Bill of Exclusion, and all that have been wrote since in Defence of *Popery* and *Slavery*, have been ransack'd to furbish it up: The Principles of the *Revolution* are therein condemned: The old exploded Doctrines of the *Hereditary Right* of the Crown, are declared to be the Fundamental Laws of this Kingdom: The Power of *Parliaments* to limit the *Succession*, is in effect denyed, and in Words declared to be illegal and unjust; odious in the sight of God, and consequently never attended with Success: The absolute Power of the Kings of *England*, (even to dispose of their Crown by *Will*, without the Consent of *Parliament*) is maintained: And all Oaths to the Prejudice of the right Heir, though his Title be defeat-

ed by Act of *Parliament*, are declared to be of no force; and that 'tis not only justifiable, but an indispensable Duty to break them. These, and such like Assertions are advanced by that insolent *Author*. To what purpose, it is but too plain. And (as Men of his Stamp generally do) he endeavours either by false Quotations, and false Facts, or else false Consequences from true ones, to support his pernicious Tenets. Of these, I shall here give some few Instances, and leave the rest to be taken Notice of, as they occur in order hereafter.

He tells us p. 200. *That surely Men may be confident in their Mistakes, and assert Things boldly against Truth*; and this I own he has sufficiently proved. His Account of Bp. Merks, has been already refuted by a very learned Hand, and therefore I shall pass it by. p. 214. He asserts confidently enough, *That Cases of Marriage, and Bastardy, are to be decided by the Rules of the Canon Law; and that they have constantly by the Practice of England, been referred to that Law*. Now this is known to be notoriously false, by every *Lawyer in England*. (a) 'Tis expressly against several Acts of *Parliament*, and (b) it has been adjudged otherwise, in above a Hundred Cases. Nay, even (c) a Book that he himself gives us in his *Appendix*, directly asserts the contrary.

In p. 107. is the following passage, *Tho' Hen. VII. owed his Success against King Richard, to a promise he had made before he invaded the Kingdom of marrying the Princess Elizabeth; Yet he always made use of his Title by the Sword, and preferred it before all others; and the Truth is, it might easily be proved by some following Passages of his Reign, that he governed more like a Conqueror than a Prince, that desired to be thought a Friend to the Constitution*. And for this, he is bold enough to refer his Reader to *Bacon's Hist. H. 7. English Ed. Fol. p. 2.*

Whereas

(a) *Stat. of Merton c. 9. 32. H. 8. c. 38. 12. C. 2. c. 33.* (b) *Coke 2. Inst. 96, & 97. & Glanv. l. 7. c. 15.* (c) *Appendix p. 38.*

Whereas Bacon in that very Place expressly says the contrary, I will give you his own Words.

(d) There were fallen to King Henry's Lot three several Titles to the Imperial Crown. The first, was the Title of the Lady Elizabeth, with whom by precedent Pact with the Party, that brought him in, he was to marry. The second, the antient and long disputed Title (both by Plea and Arms) of the House of Lancaster, to which he was Inheritor in his own Person. The third, the Title of the Sword, or Conquest, for that he came in by Victory of Battle, and that the King in Possession was slain in the Field. The first of these was the fairest, &c. As for Conquest, notwithstanding Sir William Stanley, after some Acclamations of the Soldiers in the Field, had put a Crown of Ornament (which Richard wore in the Battle, and which was found amongst the Spoils) upon King Henry's Head, as if there was his chief Title; Yet he remembered well upon what Conditions and Agreements he was brought in: And that to claim as Conqueror, was to put as well his own Party, as the rest into Terror and Fear, as that which gave him Power of disannulling of Laws, and disposing of Men's Fortunes and Estates; and the like Points of absolute Power, being in themselves so harsh and odious, that William himself commonly called the Conqueror forbore to use that Claim in the beginning; but mixed it with a Titulary pretence.

The King out of the greatness of his own Mind, presently cast the Die, and the Inconveniences appearing to him on all Parts, &c. resolved to rest upon the Title of the House of Lancaster as the main, and to use the other two, that of Marriage, and that of Battle, but as Supporters. And afterwards, The King with great Wisdom (not ignorant of the Affections and Fears of his People) to disperse the Conceit and Terror of a Conquest, had given order that there should be nothing in his Journey to London, like unto a Warlike March or Manner; but rather

(d) English Ed. fol. p. 2, 3, 4, & 5.

like unto the Progress of a King, in full Peace and Assurance.

Now what Credit can be given unto such a shameless bare-faced Impostor? After this, all the *Records* that he hath cited; and all his *Quotations* out of scarce old *Manuscripts*, may be justly esteemed as so many *Forgeries*: Nor can it be thought that he would scruple to impose upon his Reader, in Cases where 'tis difficult to find him out, when he was not ashamed to do so, even where it is so easy to detect him.

But no wonder our *Author* mis-quotes other Men's Works, when he so often Contradicts himself, and asserts in one part of his own Book, directly contrary to what he does in another.

He says, p. 23: *That when Cessions or Resignations, by the Right Heirs have been made openly, and the Subjects have had reason to believe them free, and Bona fide, Whether by direct and Express Terms, or by Actions which sufficiently implied them: The Possessor of the Throne, who is next in Blood, does then certainly acquire a Power and Authority, which sufficiently justifies all his Acts of Government: It is true by the Judgment given in the House of Peers, upon the Claim of the Duke of York, it was declared that the Resignations without the Consent of Parliament, did not oblige the Makers of them: But this seems to be the first Time, when this Doctrine was publickly acknowledged; And therefore in all former Surrenders by the right Heirs, it does not appear that their Validity was ever questioned, tho' they were not performed in the great Council of the Kingdom.*

Upon this Foundation (e) he Proceeds to prove, that William the Conqueror was undoubtedly King de Jure: Because Edgar, by submitting himself, and swearing Fealty to him, had made a full and absolute Resignation of his Claim. And by the same Argument (f) he maintains that Rufus was rightful King,
namely

(e) p. 34. & 35. (f) p. 35, 36.

namely by the Resignation of Robert, and the said Edgar. (g) The Title of Henry I. He likewise Establishes upon this Principle, for he says, that tho' Dr. Higden does his worst, he can only prove King Henry to have been an Usurper, during the first Year of his Reign; for in the second, Duke Robert came to a Composition with him, by which he absolutely yielded up the Crown. And he (h) allows even Stephen at length to have been a rightful King, after his Accommodation with the next Heir. The Mother of King Henry II. was alive, when he came to the Crown, and lived several Years afterwards. And therefore (i) to confirm his Title, he takes great pains to shew, that his Mother's behaviour was all along such, as plainly implied a Cession of her Right. Amongst other things, (k) he observes, that when Henry was sent for into England, upon the Death of King Stephen; His Mother gave him Joy, and wished him a good Voyage thither; a Circumstance truly Remarkable. So by the Cession of the Right Heir, (l) he proves also that King John was a rightful King.

Now these Cessions and Resignations, even by his own Acknowledgment, were most of them private Acts, some of them bare Implications, and all of them made out of Parliament, and without the Consent of the three Estates.

And yet in Contradiction to all this Stuff (as if he had no Sense of Shame) in p. 100, &c. are the following Words, to prove the Invalidity of the Duke of York's Resignation, though he had solemnly resigned his Right by Oath. It may now perhaps be demanded (says he) how is it then possible for a right Heir to the Crown, to resign his Title, if the Oaths and Submissions of Richard Duke of York, were not sufficient to that purpose. I answer that a legal and effectual Resignation, can only be made before, and with the Concurrence of the three Estates

(g) p. 38.

(k) p. 58.

(h) p. 55.

(l) p. 61.

(i) p. 56. &c.

Estates of the Realm. When the Resignation of Richard Duke of York, was agreed to, and publicly ratified in Parliament; Then, and then only could he be said to have made a sufficient and complete Resignation. And least it should be suspected, that I have delivered a singular Opinion destitute of all manner of Authority; I hope the following passage out of the Lord Chief-Justice Hale's Manuscript History of the Pleas of the Crown will acquit me in this point.

The King cannot wholly resign without consent of Parliament: It was a wise Expression of Q. Elizabeth, when she was urged to marry, she replied, that she was married to her Kingdom. There is a sacred Bond between the King, and his Kingdom, that cannot be dissolved without the free and mutual Consent of both in Parliament: In Foreign Kingdoms, there have been Instances of Voluntary Cessions, and Resignations, which possibly may be warranted by their several Constitutions: But by the Laws of England, the King cannot resign his Sovereignty without his free consent, and the consent of his Parliament.

It must be confessed (saith our Author) that my Lord Chief-Justice speaks only of the Resignation of a King, not of the right Heir, who is not in Possession. But surely the People of England have an Interest in the right Heir, as well as the King; and have been sworn to the one, as well as the other: And therefore it behoves them to be well assured, that Resignations made by such Heirs, are entirely Free and Voluntarily, which cannot be done to general Satisfaction, but in open Parliament.

'Tis plain and obvious, that by the Constitution of England, the rightful Heir cannot destroy his Title by any Oaths of Homage or Allegiance. But he is still at Liberty to revive his Claim when he thinks convenient, which can never be entirely extinguished, but by his free and express Renunciation in open Parliament.

And

And thus, *our Author* (that he may be sure to get the better of somebody) plainly confutes himself.

Another Artifice of *our Author*, is to put down a false Translation, or to assert a falshood in the Text; and then to refer you for the Proof, to a *Latin* Quotation in the Margin, which oftentimes is of a Different, and sometimes of a contrary Signification.

Now this is so gross an Imposition, that I wonder even *he* was not ashamed of it: But he knew every one did not understand *Latin*, and 'twas his business to impose upon as many as he could.

That my Reader may be convinced that I do not wrong him, take the following Instances.

In p. 31. He tells us, *That all the Nobility, and Bishops of the Realm, took their Oaths to King Cnute as to their lawful Prince.* The Quotation in the Margin out of *Sim. Dunelm. ad A. C. 1016.* is, as follows; *Illi (sc. omnes Episcopi & duces necnon & Principes cunctique optimates Gentis Angliæ Londoniæ congregati) juraverunt Canuto regi, quod eum regem sibi eligere vellent, eique libenter obedire.* Which may be Englished thus. *They (that is, all the Bishops, &c.) swore to King Cnute, that they would elect him to be their King, and obey him.*

P. 37. Are these Words, *Henry, with the Approbation of the Nobility, immediately steps into the Throne, and was universally obeyed by all as King.* The Quotation in the Margin, out of *Chron. Saxon. ad A. C. 1100.* to which he refers, is thus. *Optimates qui prope fuerunt, ejus Fratrem Henricum in regem elegerunt.* That is, in English. *The Nobles who were then present, chose his Brother Henry King.*

P. 50. He asserts *That they (i. e. The Bishops &c.) immediately took care to make their Peace with the Empress Maud, and swore Fidelity to her.* The Quotation in the Margin out of *W. Malmsbur. Hist. Novell. l. 2.* is in these Words. *Invocatâ itaque primo, ut par est, in Auxilium Divinitate*

vinitate, filiam pacifici Regis (sc. Matildam Imp.) in Angliæ Normanniaque Dominam eligimus, & ei fidem & manutenementum promittimus. Having therefore first, as becomes us, invoked the Assistance of Providence, We do choose the Daughter of the peaceful King (viz. Maud the Empress) to be the Sovereign of England and Normandy, and we do promise to be faithful to Her.

P. 53. We find (saith he) that the Bishops and the Clergy pretended to the sole Authority, (where the Pope did not interpose) of making and removing Kings. The Quotation in the Margin out of *W. Malmsbur. Hist. Novell.* 1. 2. is thus, *Ventilata est hesternò die causa secreto coram majore parte Cleri Angliæ, ad cujus jus potissimum spectat principem eligere, simulque ordinare.* That is, Yesterday the matter was debated privately before a Majority of the Clergy of England: To whose Province it chiefly belongs to elect and install the King.

P. 61. In the Margin is the following Passage quoted out of *Chopinus. Arthurus Dux Britannia, Comes Andegavia, &c. Noveritis quod feci charissimo Domino meo Philippo Regi Francia, illustri Homagium, ligeum, &c. De feodo Britannia, &c. Quando Deo volente ipse & ego acquisiverimus contra Johannem Angliæ Regem.* Which may be thus translated, *Arthur Duke of Britany, Earl of Anjou, &c. Know ye that I have done Homage, Allegiance, &c. To my dearest Lord Philip King of France, for the Fee of Britany, &c. When it shall please God that he and I shall have recovered them from John King of England.* From this, our Author concludes thus. *Truly if Arthur had not thought John a lawful King, he would not in time of Enmity, so have termed him; but he must needs repute him a lawful King, when at Vernon the French King being present, he did homage to John, as to the King of England his Sovereign Lord.*

I could produce many more Instances, but that I fear I have already tired my Reader; and these are sufficient to give him a taste of our Author's great Integrity. I should

I should now leave him, and proceed to the method that I propose, but that I must first beg leave to mention a few of his learned Arguments, as a Specimen of his Sense, as well as his Honesty.

(*m*) Perceiving it to be a very difficult Matter to vindicate King *Henry I.* from the Imputation of being a meer King *de facto*, and yet it being for his purpose to do so, he at length Pitches upon the following Expedient. He owns that *Rufus* made no Will; and that *Henry* was not so much as named in the Will of his Father the Conqueror: But he pretends that by the Equity of that Will, he had a good Testamentary right to succeed, and that the Exclusion of *Robert*, for the sake of *William*, would sufficiently justify *Henry's* Claim after *William's* Death. For 'tis not to be supposed (saith he) That the Conqueror (who had been highly provoked by *Robert's* frequent Rebellions, &c. intended only a short Suspension of his Title, which was to revive again upon *Rufus's* decease. Let us see how this Argument will hold in the Case of a private Person, upon a Supposition, that *William the Conqueror* had a Power to dispose of his Crown by Will.

A. being seised in Fee of Lands devisable, and having three Sons, *B. C.* and *D.* gives his Lands by his last Will to his Son *C.* and his Heirs; Or, to his Son *C.* without saying any more. *A.* dies, *C.* his second Son enters upon the Lands and dies without Issue, living *B.* and *D.* his Brothers: *D.* enters upon the Lands after the death of *C.* and insists that he had a good Right to do so. Because tho' *B.* be plainly (*n*) Heir at Law to *C.* and likewise Heir to *A.* his Father; yet it is to be presumed that it was the Intention of *A.* that the Lands should go to *D.* after the death of *C.* for he could never design to exclude *B.* from his right of Inheritance,

(*m*) p. 37.

(*n*) Littlel. L.I. C. 1. Sect. 5;

ritance, only during the Life of C. and that he should be restored to it again after his death.

Should any Lawyer in *Westminster-Hall* argue after this Manner, it would certainly be his last time of arguing; and yet (o) as our Author himself affirms) 'tis the highest Absurdity to suppose, that the Law has taken less care of the Rights of Princes, than of private Persons.

P. 10, 11, 12, 185, 209, and 212. He denies in as plain Terms as he dares, That Parliaments have any Power to limit and bind the Succession of the Crown. And yet when Acts of Parliament make for his Purpose, no Man lays greater Strefs upon them.

As an undeniable Proof of the Hereditary Right of King James I. And that the Crown not only descended to him, but should descend to his Heirs for ever (p). He quotes an Act of Parliament, made in the 1st Year of his Reign. By which (as he tells us) the Hereditary Right of the Crown, is made as far as they can, immutable and eternal. The Legislators bind themselves to the King; their Heirs, to his Heirs; and their Posterity, to his Posterity for ever. By this Law (says he) the Crown is to descend to the Heirs of K. James for ever. Again, By this it is appropriated to the next Heirs of the Royal Family. Nay so fond is he of this Act, that on a sudden he drops (q) all his Arguments from the eternal Law of God, The Prescription of nine Centuries, and the continual Claim of 550 Years in Favour of Hereditary Right; (r) By telling us that this Act was an Original Contract made with the first King of this Line, and with his Posterity, and that the whole Nation obliged it self therein to the Heirs of his Family for ever. And so much in love is he with this Act, That he would have it to be Eternal and Immutable, and never to be repealed by any subsequent Parliament. For the Politick Body (says he)

(o) p. 100.
(r) p. 15.

(p) p. 13, 14, 15.

(q) p. 13.

he) is the same now as then, and every Member of it has in Effect made the same Recognition, The Vows and Acts of Fathers, are supposed to bind their Posterity, and therefore the three Estates presume, that they have a Power to bind theirs; their Heirs to his Heirs; and their Posterity to his Posterity for ever.

And here again our Author (according to his own Expression) shews his great Confidence by asserting so many Falsties and Absurdities, in the Compass of three Pages: At a Distance they would have appeared less remarkable.

For First, In this whole Act of Parliament, the Heirs of King James are not once mention'd: They declare indeed that King James was the lawful King of these Realms, as being next Heir of the Blood Royal; And who doubts but the next Heir has always a Right to the Crown, unless there be a legal Objection against him? And what more do the Parliament with this Case, than declare that there was no such legal Objection against King James? Besides, upon Supposition that the Will of Henry VIII. was not good, which was the Foundation that King James always went upon; King James was the next Heir to the Crown by Vertue of, the Stat. of Henry VII. which entailed the Crown upon him and the Heirs of his Body.

The Parliament indeed do promise their constant Faith and Obedience to K. James, and his Royal Progeny. But this, as it happens makes against our Author; for the Word (s) Progeny, or Issue will never signifie Heirs: Nay, taking this Act to be, as he himself calls it, an Original Contract with King James, I do insist that King James by this Act, had only an Estate for Life; and that if his Children succeeded by Vertue of that, they took by Purchase, and not by Descent.

Secondly,

(s) Coke 1 Inst. f. 20. b.

Secondly, His proving the *eternal* and *immutable* Obligation of *Hereditary Right*, from the Authority of an *Act of Parliament*, which he would likewise have to be *unalterable*, is too absurd to need a Confutation.

And lastly he has by this Argument entirely confuted himself, overthrown all his own Doctrine of *Hereditary Right*, and answered his whole Book. For if this *Act* was an *Original Contract* betwixt the *King* and the *People*; he must own, that the *People* were at that time at Liberty to make such a *Contract*; and consequently not under any precedent Obligation, at least in respect to *King James*, whom he calls the *first King of this Line*: For by his own Acknowledgment, the 1st Year of *King James I.* is the *Era* of the present *Hereditary Right* of the Crown; And the *Original Contract* betwixt that *King*, and his *People*, the Basis on which it was founded: And therefore, as he himself says, *The Disputes about the Right of Succession are ended*. By this Argument he likewise owns that the *three Estates*, are a distinct Body, capable of acting without the *King*, because they have made a *Contract* with him; and to all *Contracts*, there must be two Parties. And as he says, that *the three Estates have a Power to bind their Posterity to the Performance of this Contract*: So he owns, that their Acts are of Force, even to bind their Posterity in the Case of the *Succession*, without the Assent of the *King*: For in the Expression of *the three Estates*, the *King* is not included, nor can that Part of the *Contract*, which is to bind their Posterity be made by him; because it is made with him, and no Man can contract with himself. Yet our Author (t) in another place expressly denies, that *the three Estates without the King*, have any Power or Authority at all.

In

(t) p. 6. & 7.

It would be endless here to mention all the Absurdities that he has advanced: As, *That the Hereditary Right of the Crown is immutable, That it cannot be altered by Act of Parliament, And yet that it may be barred by the Will of the King, Or, The Cession of the Right Heir. That the King cannot resign his Crown, without the Consent of his Parliament, And yet that he is such an absolute Proprietor of his Crown, that he may give it away to whom he will, either by Deed in his Life time, or by his last Will.*

But these, and many others, shall be taken Notice of hereafter.

As it was the Business of the Author of the *Hereditary Right*, rather to confound than convince, so I shall not at all observe his Method. But in order to be as clear as I can, I shall digest what I have to say into several distinct Heads, under some of which all his Arguments shall be fully considered and confuted.

The Nature and Design of Government in general, shall in the first Place be briefly enquired into.

In Opposition to the false Account of the Succession, given by the Author of the *Hereditary Right*; I shall in the next Place endeavour to give a true Account of it, as far as there are any Footsteps in History.

From thence I shall in the following Chapters, make such Conclusions, as will necessarily overthrow our Authors whole Scheme, and will shew it to be (according to an Expression of his own) a *Novel Law*, and a *Modern Constitution*.

Lastly, *The Revolution*, and the present Establishment of the Succession, shall be proved to be agreeable to the *Ancient Constitution*, and the *fundamental Laws* of this Kingdom.

I shall not particularly concern myself with any Dispute betwixt Dr. *Higden*, and our Author; as knowing that the *Dr.* is sufficiently able to vindicate his excellent Treatise, from the Cavils, and Misrepresentations of his *Antagonist*.

CHAP.

CHAP. I.

Of the Nature and Origin of Government in general.

THat *Government* is from God I readily own, as every thing else is that promotes the Happiness of Mankind. It was for this End that it was at first ordained, and whenever this its original Design is inverted, it ceaseth to be of *Divine Institution*. A State of Nature must be necessarily pre-supposed, before ever Government began: But Men quickly found it expedient to form themselves into Societies. For the well regulating these Societies, and that every man might not be his own Judge, some sort of *Government* was thought necessary: And so *Government* was at first Instituted, not for the sake of any one particular Member, or for the aggrandizing of any one Family; but for the Good of the whole Society.

But lest I should be accused of advancing new Notions, and a new Scheme of *Government* of my own; I shall quote some Passages out of Mr. *Hooker*, in which the Nature, and Origin of *Government* are very accurately described.

Mr. *Hooker* is an Author of unquestionable Credit, and has been always esteemed a Man of great Learning as well as a truly Orthodox Divine: And therefore his Authority will be of much greater Weight than any thing that I can say.

In his first part of *Ecclesiastical Polity*, Sect. 10. He reasons thus.

‘ We see how Nature it self teacheth Laws and
 ‘ Statutes to live by: The Laws which have been
 ‘ hitherto mention’d, do bind men absolutely
 ‘ even as they are Men, although they have never
 ‘ any settled Fellowship, never any solemn Agree-
 ‘ ment amongst themselves what to do, or
 ‘ not to do. But forasmuch as we are not by our
 ‘ selves, sufficient to furnish our selves with com-
 ‘ petent Store of things needful for such a Life, as
 ‘ our Nature doth desire, a Life fit for the Dignity
 ‘ of a Man: Therefore to supply those Defects
 ‘ and Imperfections which are in us, living singly
 ‘ and solely by our selves, we are naturally indu-
 ‘ ced to seek Communion and Fellowship with
 ‘ others. This was the Cause of Mens uni-
 ‘ ting themselves at first into politick Societies,
 ‘ which Societies could not be without Govern-
 ‘ ment, nor Government without a distinct
 ‘ kind of Law from that which has been already
 ‘ declared.

‘ We all complain of the Iniquity of our Times ;
 ‘ not unjustly, for the Days are evil: But compare
 ‘ them with those Times, wherein there were
 ‘ no civil Societies, with those Times wherein
 ‘ there was as yet no manner of publick Regi-
 ‘ ment established; and we surely have good cause
 ‘ to think, that God hath blessed us exceedingly,
 ‘ and hath made us behold most happy Days. To
 ‘ take away all such mutual Grievance, Injuries
 ‘ and Wrongs, there was no way but only by
 ‘ growing upon some Composition and Agree-
 ‘ ment amongst themselves, by ordaining some
 ‘ kind of Government publick, and by yiel-
 ‘ ding themselves subject thereunto; that unto
 ‘ whom they granted Authority to rule and go-
 ‘ vern; by them the Peace, Tranquillity, and
 ‘ happy Estate of the rest might be procured. Men
 ‘ always knew that when Force was offered, they
 ‘ might be Defenders of themselves; they knew
 ‘ that howsoever Men may seek their own Commo-
 ‘ dity.

dity, Yet if this were done with injury unto others, it was not to be suffered, but by all Men, and by all good means to be withstood; finally they knew that no Man might in reason take upon him to determine his own right, and according to his own Determination, proceed in maintenance thereof, in as much as every Man is towards himself, and them whom he greatly affecteth, partial; And therefore that Strifes and Troubles would be endless, except they gave their common consent to be all ordered by some whom they should agree upon; without which consent, there were no reason that one Man should take upon him to be Lord or Judge over another. Because although there be according to the Opinion of some very great and judicious Men, a kind of natural right in the Noble, Wise, and Vertuous, to govern them which are of servile Disposition; nevertheless, for Manifestation of this their Right, and Men's more peaceable contentment on both Sides, the assent of them, who are to be governed seemeth necessary. To Fathers within their private Families, Nature hath given a supreme Power; for which cause we see throughout the World, even from the first Foundation thereof, all Men have ever been taken as Lords, and lawful Kings in their own Houses. Howbeit, over a whole grand Multitude, having no dependency upon any one, and consisting of so many Families, as every Politick Society in the World doth, impossible it is, that any one should have compleat lawful Power, but by consent of Men, or immediate appointment from God; because not having the natural Superiority of Fathers, their Power must needs be usurped, and then unlawful; or if lawful, then either granted or consented to by those over whom they exercise the same; Or else given extraordinarily from God, unto whom all the World is subject.

‘ The Inconveniences of one kind of Govern-
 ‘ ment, have caused sundry others to be devised.
 ‘ So that in a Word, all publick Regiment of what
 ‘ kind soever, seemeth evidently to have risen
 ‘ from deliberate Advice, Consultation, and Com-
 ‘ position between Men, adjudging it convenient,
 ‘ and behoofeful.

‘ Some kind of Regiment the Law of Nature
 ‘ doth require; yet the kinds thereof being many,
 ‘ Nature tyeth not to any one, but leaveth the
 ‘ Choise as a thing Arbitrary. At the first, when
 ‘ some certain kind of Regiment was once approv’d,
 ‘ it may be that nothing was then farther thought
 ‘ upon for the Manner of governing; but all per-
 ‘ mitted unto their Wisdom and Discretion,
 ‘ which were to rule; till by experience they
 ‘ found this for all Parts very inconvenient; so as
 ‘ the thing which they had devised for a Remedy,
 ‘ did indeed but increase the sore which it should
 ‘ have cured. They saw that to live by one Man’s
 ‘ Will, became the cause of all Men’s Misery.
 ‘ This constrained them to come unto Laws,
 ‘ wherein all men might see their Duties before-
 ‘ hand, and know the Penalties of transgressing
 ‘ them.

‘ That which we spake before concerning the
 ‘ Power of Government, must be here applied
 ‘ unto the Power of making Laws whereby to go-
 ‘ vern; Which Power God hath over all. And
 ‘ by the natural Power whereunto he hath made
 ‘ all subject, the lawful Power of making Laws
 ‘ to command whole Politick Societies of Men,
 ‘ belongeth so properly unto the same entire So-
 ‘ cieties; that for any Prince or Potentate of
 ‘ what kind soever upon Earth, to exercise the
 ‘ same of himself, and not either by expresse Com-
 ‘ mission, immediately and personally received
 ‘ from God, or else by Authority derived at the
 ‘ first, from their consent, upon whose Persons
 ‘ they impose Laws, it is no better then meer
 ‘ Ty-

‘ Tyranny. Laws they are not therefore, which publick Approbation hath not made so.

From hence it is evident, *That absolute Monarchy* (which is by some Men reckoned the only Government) is inconsistent with Civil Society, and so can be no Form of Civil Government at all; But is (as *Hooker* expresses himself) *no better than meer Tyranny*. That all Governments of what kind soever, arose either from *Composition* and *Agreement*; or else by expresse Commission, *immediately and personally received from God*; the latter of which can relate to no Prince or Potentate, since the Destruction of the *Jewish* Government.

But Mr. *Hooker* has been so full and clear on these Points, that I have no Occasion to enlarge upon him.

I shall therefore conclude this *Chapter* with laying down two Rules of Government; which are founded upon Mr. *Hooker's* Principles, and which will once for all answer several Objections, that may perhaps be made against the following Treatise.

First, Government was made for Man, and not Man for Government; consequently, the good of the People is the supreme Law in all Countries. And therefore all Notions of Government, which are inconsistent with the good of the People, must necessarily be false and erroneous.

Secondly, Neither in the *old* nor *new Testament*, is there any one Form of Government prescribed to be observed in all Countries. We read in the *old Testament* of many sorts of Governments, nor is the Preference given to any of them. And our *Saviour* (as 'tis plain by the *new Testament*) never intended to make any Alteration in the Constitution of any particular Country; But only in general commanded all Subjects to be obedient to the superior Powers. Obedience is in every Country due from Subjects to their Governours, by the general Rules of Christianity; But to what parti-

6 *Of the Succession, from Julius Cæsar,*
cular Persons it is to be paid, must be determined
by the Laws of each Nation. And those Laws
likewise (as we have been taught by a very learn-
ed Prelate) must be the Measure of every Subject's
Obedience.

C H A P. II.

*Of the Succession of the Crown, from the
Time of Julius Cæsar, to the Reign of
William the Conqueror.*

THE Constitution of every Country, is best
learnt from the Histories of it. And as the
Proceedings of any one Age ought not to deter-
mine the Matter; So in order to form a true
Judgment, we should carry our Enquiries as high
as we can. A view of the Government in its In-
fancy, and a due Observation by what Steps and
Degrees, by what different Changes and Revolu-
tions it came to be what it now is, are in this Case
the best Directions that we can have. The Author
of the *Hereditary Right* has thought fit to fix his
Period at the Conquest; If he owns that his *Consti-
tution* began then, his Scheme must fall at once;
And if not, I am afraid he will be at a loss for a
Reason for his not beginning sooner: Though if
he would but be so ingenuous as to tell the Truth,
he must confess, that it was with the utmost ha-
zard that he ventured to go so far, and that he
would have been a Madman, if he had ventured
farther. However, I shall shew him the way.

The ancient Inhabitants of this Nation were
famed for nothing so much, as their extraordinary
Love of Liberty. For this, whenever there was

occasion, they bravely hazarded their Lives, May their example never be forgotten.

The Accounts that are given of this Island, before the *Romans* came hither, are so very imperfect and uncertain, that they are not at all to be depended on; and therefore I shall begin with *Julius Caesar*; (a) who says, that at the Time of his coming hither, the *Britons* were subject to many little Princes. These, if we may judge by the extent of their Dominions, were little better than Lords of Liberties. They were independent on each other, and frequently quarrelling amongst themselves: But whenever they were invaded by a foreign Enemy, they immediately joined together, and chose one to command them all; as we learn from (b) *Caesar*, (c) *Strabo*, and (d) *Tacitus*. So much did they prefer the Cause of Liberty, and the general good of their Country, before their own private Animosities.

Upon *Caesar's* Invasion, *Cassibellaunus*, one of these little Princes, was by (e) common consent chose General; of whom there is a remarkable Passage in (f) *Geoffry Monmouth*, which I cannot pass by without Notice. *Caesar* at his first coming into *Britain*, sends a Letter to *Cassibellaunus*, commanding him to submit to the *Romans*, as other Nations had done. At this, *Cassibellaunus* is much enraged, and returns a very noble Answer, in which there is the following Sentence: *Libertatem in tantum consuevimus habere, quod prorsus ignoramus quid sit servituti obedire; quam si ipsi Dii conarentur nobis eripere, elaboraremus utique omni nisu resistere, ut eam retineremus.* We are altogether ignorant what it is to be Slaves, having been always

(a) *Cæs. Com. Lib. 5.*

(b) *Ibid.*

(c) *Lib. 4.*

(d) *In vita Agricola.*

(e) *Cæs. Com. Lib. 5.*

Summa imperii bellique administrandi communi consilio permissa est Cassibellauno.

(f) *Lib. 4. C. 1, § 2.*

8 Of the Succession, from Julius Caesar,

ways accustomed to Liberty ; which if even the Gods themselves should endeavour to deprive us of, we would use our utmost Efforts to preserve it. So little was Slavery in Fashion at that Time. And with this agrees the Testimony of *Dion*, who tells us in the Life of *Severus* the Emperor, that the People of *Britain* held the Government in their own Power. As therefore at the Time of the *Roman* Invasion, *Britain* was not under one King, but divided into several distinct Governments, the Heads of which had so little Authority, that the Power was still said to be in the People ; So it plainly appears that, at that time, the *Tree of Hereditary Right*, was not yet sprung up ; nor were the Seeds of it sown till long afterwards. From whence I observe, that as there was manifestly a Time when this Island was not governed by an *Hereditary Monarch* ; So whenever that form of Government began, it must necessarily be founded either upon *Force*, or *Agreement*. If upon *Force* ; Where is the Right ? For according to our Author's own Argument, *Ex injuria jus non nascitur*. And according to another old Maxim, *debile Fundamentum fallit opus*. And if it began by Agreement ; Down goes our Author's whole Scheme. But to return to my History.

(g) *Lucius* who according to the best Historians, was the first Christian King in the World, and who died in the Year 187. is the first likewise that looks like a King of this Realm. We are told indeed of several that were Kings before him ; But they were all Tributary Princes to the *Romans*, and set over us by them. Nay, even *Lucius*, though he bore the Title of King, seems to be but a Prince of the *Romans* making : And we can form no Judgment of our Constitution from either the Power
or

(g) *Galfred. Monumet. Lib. 5. C. 1. & Matth. Westm. p. 106, & 112.*

or Creation of such Tributary Kings. *Lucius* died without Issue. (b) Upon which *Severus* the Emperor came over nither himself in order to settle the Succession : The *Britons* being willing to shake off the *Roman* Yoke, chose one *Fulgentius* their General (a Man who had no pretence of Title) in order to oppose *Severus*. Several Battles ensued thereupon : And at length both *Severus* and *Fulgentius* were slain. (i) After this the *Britons* elected *Bassianus* the Son of *Severus* to be their King, in Opposition to his Brother *Geta*; the latter being entirely a *Roman*, but the former being a *Briton* by his Mother's side. *Bassianus's* Reign was very short, and after him *Carausius* was elected King, a Man of a very mean Extraction. (k) But he likewise did not Reign long, being killed by *Allectus* the *Roman* General, who thereupon succeeded him in his Kingdom ; and was soon after slain by *Asclepiodotus* whom the People had elected for their King. (l) *Asclepiodotus* reigned about ten Years, and was then slain by *Coel* Duke of *Colchester*. *Coel* reigned but a very little while, and was succeeded by *Constantius* a *Roman* Senator, who married *Helena*, the Daughter of *Coel*. (m) Of these two was born *Constantine the Great*, and succeeded his Father *Constantius*. (n) But *Constantine* being called away to *Rome*, *Octavius* a *British* Prince, takes Advantage of his absence, falls upon those to whom he committed the Government, and having slain them, seizes of the Kingdom. Against him, *Trahern* a Brother of *Coel* is sent

(b) *Galfred. Monumet. l. 5. C. 1. & Matth. Westm. p. 114.* (i) *Ibm.* (k) *Galfred. Monumet. lib. 5. C 4, & 5. & Matth. Westm p. 123.* (l) *Galfred. Monumet. l. 5. C. 6. & Matth. Westm. p. 124.* (m) *Galfred. Monumet. l. 5. c. 6. & Matth. Westm. p. 130.* (n) *Galfred. Monumet. l. 5. c. 8. & Matth. Westm. p. 131.*

10 *Of the Succession, from Julius Cæsar,*

sent from *Rome* with an Army. *Octavius* is defeated by *Trabern*, and drove out of his Kingdom: But he soon after regained it, having procured *Trabern* to be killed in an Ambuscade. (o) After this, he reigned many Years without disturbance from any one; and was succeeded by *Maximinian* a *Roman*, who had married his Daughter. *Maximinian* was killed at *Rome*, and was succeeded by *Gratian*, one of his Generals, who governing in a very tyrannical Manner, was soon slain by the People.

After his death, (p) The *Britons* being oppressed by the *Picts*, &c. were glad to seek Protection from the *Romans*, who came several Times to their Assistance, and drove the *Picts*, &c. out of *Britain*. (q) But the *Romans* being obliged at length to return home, and leave the *Britons* to take care of themselves; they were again grievously distressed by the *Picts*, &c. Whereupon *Guitheline* Archbishop of *London*, was sent over into lesser *Britain*, to offer the Crown to *Aldroenus*, then King of that Country, upon Condition, that he would come and protect them. *Aldroenus* refused to accept of it himself, but recommended his Brother *Constantine* to them, who coming over hither with an Army, cleared this Nation of the *Picts*, &c. And was thereupon for his good Services, at a publick assembly held at *Chichester*, elected by the People to be their King. (r) *Constantine* having reigned ten Years, was at length stabbed by a *Pict*. (s) After his Death a great Council was held in order to settle the Succession; where 'tis plain they did not think

(o) *Galfred. Monumet. l. 5. c. 9, 10. & Matt. Westm. p. 140.* (p) *Galf. Monumet. l. 6. c. 1. & Matt. Westm. p. 146.* (q) *Galf. Monumet. l. 6. c. 3, 4. & Matt. Westm. p. 148, 149.* (r) *Galf. Monumet. l. 6. c. 5. & Matt. Westm. p. 150.* (s) *Galf. Monumet. l. 6. c. 6. & Matt. Westm. p. 150.*

think themselves obliged by any certain Rules: For some were for *Ambrosius*, the second Son of the deceased King, others for *Utherpendragon* his youngest; and some were for others of the Royal Family, whom they thought better able to protect them. But *Vortigern* a Man of great Interest, proposed *Constans* a Monk, the eldest Son of *Constantius*; his Profession was a sufficient Objection against him, and accordingly the People refused him. But so great was *Vortigern's* Power, that he forced them to accept of him: And accordingly he was crowned by *Vortigern* (*vix annuente populo*) which the Historians of those times, represent as the highest Act of injustice. And here I cannot but take Notice of *Vortigern's* Speech to *Constans*, upon his offering him the Crown. *If you will promise* (saith he) *to be entirely governed by me, and very much to encrease my Estate, I will endeavour to wheedle the People, and persuade them to permit you to be their King, though you ought not by Law to be so, as being a of religious Order.* Accordingly *Constans* when he was made King, gave him the best Places in the Kingdom, and in short whatever he had a Mind to. I pray God that none of *Vortigern's* Successors (who act upon the same Principle) may ever meet with the like Success. (t) The Reign of *Constans* was very short, and he served only to make way for the Rise of the ambitious *Vortigern*; who soon procured him to be dispatched, by a *Guard of P---ts* that he had persuaded him to take; A Circumstance, likewise well worthy of Remark. But *Vortigern* the better to colour over his Treason, immediately executed his under Actors; So that we see Servants even in those Days were oftentimes hanged for their Masters. (u) As *Vortigern* obtained the Crown, neither by
Ele-

(t) *Galf. Monum.* l. 6. c. 7, 8. & *Matt. Westm.* p. 151.

(u) *Galf. Monumet.* l. 6. c. 13. & *Matt. Westm.* p. 157.

12 Of the Succession, from Julius Cæsar.

Election, nor any Pretence of Right, so he governed very arbitrarily till he was at length deposed for that Reason, and his Son *Vortimer* placed in his Stead: But he was soon poysoned, by the Instigation of *Romen* his Step-Mother, and *Vortigern* regained the Crown. (x) At last the *Britons* being quite wearied out with his Tyranny, sent for *Aurelius Ambrosius* and *Utherpendragon*, who had retired into little *Britain*. *Ambrosius* reigned first; (y) and after his Death, *Utherpendragon* in a full Assembly of the Clergy and Laity, was chose King at *Winchester*.

(z.) Upon the Death of *Utherpendragon*, at a general Meeting of the Clergy and Laity, *Arthur* his Son was consecrated King, Regard being had to his great personal Vertues, as well as to his being of the Royal Family. *Arthur's* Reign was long and glorious, but (according to the best Accounts) he was at last slain in Battle, and *Constantine* his Kinsman succeeded. (a) After his Death *Conanus* his Nephew seized on the Kingdom, having first imprisoned his Uncle, and slain two of his Uncle's Sons, who all had a Right to claim the Crown before him. *Conanus* was succeeded by *Vortiper*; *Vortiper* by *Malgo*; and *Malgo* by *Caretius*: And it does not appear in any History, that there was any Relation betwixt these Four. (b) *Caretius* was the last of the *British* Kings, the *Britons* being in his Reign, entirely vanquished by the *Saxons* and *English*.

From this short Account of the *British* Kings, it appears plainly what little Regard was then had to an *Indefeasible Hereditary Right*. Du-

(x) *Galfr. Monumet. l. 7. & 8. & Matt. Westm. p. 160.* (y) *Galfr. Monumet. l. 8. c. 17. & Matt. Westm. p. 188.* (z) *Galfr. Monumet. l. 9. c. 1. & Matt. Westm. p. 185.* (a) *Galfr. Monumet. l. 11 & Matt. Westm. p. 192. & c.* (b) *Galfr. Monumet, l. 11. & Matt. Westm. p. 198.*

During the *Saxon Heptarchy*, whilst every Kingdom was governed by Laws of their own; 'tis absurd to presume that they agreed in one Rule of Succession. 'Tis probable from the many Changes that happen'd, that they had no Rule at all. The Account that we have of them is very obscure; But we are told by * *Matt. Westm.* that the Kingdom of the *Northumbrians*, was originally elective, for that the *Proceres Anglorum*, having subdued that Country, chose *Ida* their King.

(c) All these seven Kingdoms were at last united under *Egbert*: But upon his Death the Kingdom was again divided, and continued so till the time of *Alfred*. And 'tis observable that *Ethelwolph* the Son of *Edgar*, had only the Kingdom of the *West Saxons*; But one *Athelstane*, a Bastard of *Ethelwolph* had all the other Kingdoms that his Father *Edgar* had conquered. (d) *Alfred* being a warlike Prince, at length after many Battles subdued the whole Monarchy of *England*, and continued sole Monarch to his Death. From the Time of *Alfred* to *Canutus* the *Dane*, there were several Alterations in the Succession, and most of the Kings in that time (whatever their Right was) were content to accept of the Crown from the People. To *Alfred* succeeded *Edward* the Elder, after whose Death, *Athelstane* his Bastard, was created King, in Opposition to his lawful Sons; To *Athelstane*, *Edmund* the Elder succeeded. (e) To *Edmund* the Elder, *Edred* his Brother, tho' *Edmund* left two Sons: But these were set aside by the People, upon the Account of their being of an Age incapable to govern: Which it seems was then thought a sufficient Reason to put them both by. But they both afterwards succeeded successively by

*P. 193. (c) *Matt. West.* p. 301. (d) *Id.* 338. (e) *W. Malms.* l. 2. c. 6. f. 55. *Hen. Hunt.* l. 5. f. 355. & *Matt. Westm.* f. 367.

14 *Of the Succession, from Julius Caesar;*

by the Consent of the People. (f) And of *Edgar* the youngest, it is particularly said, that he was elected by the whole Body of the People: (g) After *Edgar's* Death there was a great Contention about the Succession, some giving their Votes for *Edward* his eldest Son, and some for *Ethelred* his Son by a second Wife, but at length *Edward* was elected by a Majority. But he did not reign long, being slain by the Treachery of his Step-Mother; after which *Ethelred* was King: In whose Reign there was a remarkable Occurrence of which we have an Account given by (h) *Ailredus* Abbot of *Rievallis*. *Ethelred* being very desirous to settle the Succession in his Life-time, to that Purpose summoned a great Council, and proposes the Matter to them. The Council were divided, some being for *Edmond* his eldest, and some for *Alfred* his 2d Son. But at last they agreed to set them both by, and elected the Infant that was in the Queen's Womb. To this Election the King gave his Assent, and the whole assembly swore Fealty to the Child before it was born. How ridiculous soever this may seem, yet it plainly appears from hence, that Men had then no Notion of the Indefeasible Right of Primogeniture; for if this had been thought sufficient, *Ethelred* (who was no tame Prince) would certainly never have permitted a Debate about the Election of a Successor, much less have summoned a Council expressly for that Purpose, and then suffered his two eldest Sons to be set aside by them.

(i) But notwithstanding this upon the Death of *Ethelred*, in a full Assembly of the Bishops, Abbots,

(f) *Matt. Westm.* p. 369. (g) *Sim. Dunelm. an.* 974. f. 160. & *Matt. Westm.* p. 376. (h) f. 372. (i) *S. Dunelm. an.* 1016. f. 173. *Matt. Westm.* p. 396. *Brompbon.* f. 903.

bots, Lords, and many others of the best of the People, *Canutus* was elected King, and all *Ethelred's* Issue rejected. *Edmond* being supported by some of his Friends, endeavoured for a while to maintain his Claim, but at length he came to a Composition with *Canutus*, and being slain soon afterwards, the *Dane* governed this whole Island so long as he lived, without Disturbance.

(k) Upon the Death of *Canutus*, a great Council assembled at *Oxford* in order to elect a new King. Accordingly in that Assembly *Harold Harefoot*, *Canutus's* Bastard by his Concubine *Algiva* was chose King. 'Tis true indeed, that Earl *Godwin*, and the great Men of the *West Saxons*, proposed to choose *Hardeknute*, the legitimate Son of the late King, or either of the Sons of *Ethelred*, but they could not prevail for this Reason; because both *Hardeknute*, and the Sons of *Ethelred* were at that time in foreign Countries, which was thought a sufficient Objection against them. (l)

But afterwards upon the Death of *Harold*, *Hardeknute* coming into *England* was elected King. (m) *Hardeknute* died childless, whereupon it was ordained in a general Council that no *Dane* should for the future be admitted to reign. Accordingly they elected *Edward the Confessor*, the youngest Son of *Ethelred*, tho' *Edmond Ironside* his elder Brother had a Son then alive, whose name was *Edward*, and who was Father to *Edgar Atheling*, living also at the same time. And that by the Election of *Edward the Confessor*, was not meant the meer Ceremony of asking the Consent of the People at his Coronation, appears from this, that he was elected at *London*, and not crowned till some time

C

after

(k) *Matt. West.* p. 409. *Brompton.* 932. *H. Hunt.* l. 6. f. 364.
 (l) *H. Hunt.* l. 6. f. 365. *Matt. Westm.* p. 411.
 (m) *Brompton.* 934, 945. *Matt. Westm.* p. 415.

16 Of the Succession, from Julius Cæsar.

after at *Winchester*. We see here what little Regard was had to the Right of Primogeniture; nay, tho' *Edward* the Son of *Edmond Ironside* had an undoubted Title to the Crown, if Proximity of Blood could have given it; (n) Yet the Confessor was so far from suspecting any danger from such Title, that he invited his Nephew into *England*, received him with the highest Expressions of Joy, and entertained him with the greatest Confidence. (o) Nay, he did what he could to get the Crown settled after his own Death upon *Edgar*, the Son of this *Edward*. (p) But notwithstanding the People upon the Death of the Confessor elected *Harold*, though *Edgar* was living, who had an indisputable right to the Crown, as far as Proximity of Blood could give it him. That the Confessor, as *Harold* pretended, gave him the Kingdom, is not at all probable; Or if true, would not be material, as I shall sufficiently prove in a following Chapter. The Instances that I have given in this, do plainly shew, that before the Conquest, the Business of the Succession was always determined by the great Council of the Nation (call it by what name you will) unless in those Cases, where Force prevailed over Right, from which no consequence can be drawn.

(n) *Matt. Westm.* p. 423.
Westm. p. 433.

(o) *ib.*

(p) *Matt.*

C H A P. III.

Of the Succession of the Crown, from William the Conqueror, to King James the First.

FROM the short account, I have already given of our *Constitution* before the Conquest; It appears, that neither our *British*, nor *Saxon* Forefathers, thought themselves tied down to any certain Rules of Succession. They did often indeed admit of the next of Blood, when he did not appear unqualified for that great trust, the Government of the Kingdom. But so far were they from thinking themselves obliged to take the next Heir, whether he were qualified or not; that even want of Years, was thought a sufficient cause to exclude the next Heir, tho' he otherwise appear'd never so promising.

Whether since the Conquest this Kingdom is become more *Hereditary* than before, will appear from the following History.

The *Author of the Hereditary Right* has taken great Pains to bring the *Conqueror* into his Catalogue of Hereditary Kings. The Authorities that he chiefly builds upon, are *Ingulphus*, *Gul. Pictaviensis*, *Gul. Gemmeticensis*, and the Anonymous Author of *Brevis Relatio de Willielmo primo rege*, published by *Silas Taylor*, at the End of his History of *Gavelkind*. Were there no Historians extant of equal Authority to confront these; Or did they not appear to be notoriously false upon the face of their own Records; Yet there would be very good Reason, to except against their Evidence. For *Ingulphus* was Secretary to Duke *William*, *Gul. Pictaviensis* was his Chaplain, *Gul. Gemmeticensis* was a Native of *Normandy*, and dedicated his Book to *William the Conqueror*. And the Author of the

18 *Of the Succession, from Will. the Conq.*

Brevis Relatio, &c. is supposed by the (q) Editor to have been one of the Conqueror's original Monks of his Abbey of Battel: Excellent and very convincing Evidence to prove the Title of a Prince! And who after this (as our (r) Author says) can deny the Hereditary Right of the Conqueror, when 'tis proved by such good Authority?

Eadmerus is also mentioned as corroborating this Evidence, but he has not cited him particularly; however I shall do it for him.

(s) Our Author, from these Historians, gives the following account of the right of Duke William, 'That *Edward* the Confessor, loved him as his own Son, that being much weakened with old Age, and perceiving the Incapacity of *Edgar Atheling* to govern, he sends *Robert*, Archbishop of *Canterbury* into *Normandy*, to acquaint *William* Count of *Normandy*, that he had appointed him to be his Successor.

Now if I make it appear plainly, That every Circumstance of this is false; The Conqueror's right must immediately vanish as far as it is founded on this pretended Donation.

By the Words *Senio Confectus*, it must be understood that *Edward* made this Will at least towards the latter end of his Life. Now (t) *Edward* came to the Crown in the Year 1042. And about the beginning of the Year 1057, sent for his Cousin *Edward* out of *Hungary*, in order to make him his Heir, but he died soon after his Arrival, and left his Son *Edgar Atheling*, and his two Daughters *Margaret* and *Christina*, under the Tuition of the King. (u) Now according to our Author's own Historians, this Donation to D. *William*,

(q) *Silas Taylor*, at the end of his History of *Gavel-kind*. (r) p. 20. (s) p. 24, 25. (t) *Mat. Westm.* p. 415, & 423. (u) *Ingulphus* as quoted by him. p. 25.

liam, was not pretended to be made till after the Death of this *Edward*: And if then it appears, that Archbishop *Robert* who (as 'tis said) was sent over to *Normandy* with this Donation, was dead long before, the whole account when falsified in so very material a Part, may be justly looked upon as fabulous. (x) According to some of our Historians, he was advanced to the See of *Canterbury*, in the Year 1050. Others say in 1051, but all agree, that he fate there but two Years, and that he was then banished the Kingdom, and turned out of his Archbishoprick: That he died not long afterwards, at the Abbey of *Jumigies* in *Normandy*, and that in 1055. *Stigard* succeeded him in his Archbishoprick. (y) The Chronicles of the Abbey of *Mailros* say, that he was deposed and banished, by Vertue of a general Law, for banishing all the *Normans* out of the Kingdom. And (z) Mr. *Collier* Assigns the Cause of this Severity, to be his having been instrumental in bringing about the Trial of Queen *Emma* by *Ordeal* for incontinency. (a) And yet in 1065. *Ingulphus* makes this very *Robert* to have been sent over as Legate a *Latere* by King *Edward*, to notify to *Duke William*, that he was appointed his Successor to the Crown of *England*; So that this whole Story appears to be a gross Imposture.

But since *Edward* is represented to have loved *Duke William*, as though he were one of his Sons. Let us see what *Eadmerus*, one of our Author's own Historians, has said about this Matter. (b) He tells us, that upon the Reconciliation between the Confessor, and Earl *Godwyn*, the King took *Vulnothus*, one of the Earl's Sons, and *Hacum* one of his Grandsons, as Hostages for the Father's Fidelity:

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(x) Steph. Birchington, p. 5, 6. *Successio Archi-Ep. Cant. ex Annal. Rossens.* p. 86. Rad. de Diceto 87. *Canonicus Liebfield* 107. (y) *Chron. de Mailros* 157. (z) *Collier's Dict. in Robertum A. B. C.* (a) p. 68. (b) *Eadmeri Hist. Novorum*, p. 4, & 5.

20 *Of the Succession, from Will. the Conq.*

lity: That he sent them over to be kept in *Normandy*, as 'tis probable, because he did not think, that he could keep them secure enough in *England*, where the Power of *Earl Godwin* was so great: That *Harold* after the Death of his Father *Godwin* (having worked himself into a better Esteem with the King) desired leave to go over to *Normandy*, to fetch back his Brother and Nephew. To this Proposal *Edward* did not consent without great Difficulty, telling him in plain Terms, that he very well knew the Temper of *Earl William*, and that he would not permit him to return, without gaining some Advantage over him, and in short that such his Voyage would prove very detrimental to the Kingdom; all which fell out accordingly: For *William* taking Advantage of the Power he had then over *Harold*, forced him to take an Oath to assist him, in obtaining the Kingdom of *England*, after the Death of *Edward*; telling him that *Edward* had given it him when he was a Youth, and liv'd with him in *Normandy*. *Eadmerus* further tells us, that upon *Harold's* Return, *Edward* upbraided him with his Rashness in entring upon that Voyage so contrary to his Advice. By this Account it plainly appears, that if ever *Edward* did in reality make any Promise to *William* of assuring the Succession to him, 'twas before he had Possession of the Crown, or even so much as a Right to succeed himself. For *Edward* could not succeed *Hardeknute* by Proximity of Blood; for tho' they were descended from the same Mother, their Fathers were no ways related, and therefore we find it expressly said of him, that he was elected by the Estates of the Realm.

Such a *Donation* therefore, if any such there was, must be absolutely void in its own Nature, since no Man can give away the Reversion of a thing in which he has no Right.

But most Authors are of Opinion that there was no such *Donation* at all, particulary *Simeon of Durham*:

ham : But be this as it will, we may plainly see by (c) *Harold's Answer to Duke William*, what was looked upon then to be the Law of England in this matter : For he told him the Inheritance of the Crown could not be alienated without the general Consent of the Kingdom. And that this was the receiv'd Opinion at that time, is proved likewise by our Author's own (d) Evidences ; who says, that *Duke William* insisted that *Edward* appointed him to be his Successor, with the Consent and Advice of his Barons, and all the great Men of his Kingdom; and that therefore he was willing his Right should be tried even by the Laws of *England*.

Either therefore there was no such Donation at all ; or else it was in the Nature of an Act of Parliament, being made by the joint Consent of the King, the Barons, and the People. Take it therefore which way you will, the *Hereditary Right* of the Conqueror, (to make use of our Author's own Expression) that is, his Testamentary Right is at an end.

And 'tis not pretended even by our Author, that he had any Title by Birth, as being (tho' related to the Confessor) not of the Blood Royal ; besides, he was illegitimate.

I wonder therefore that our Author could have the Assurance to place him amongst his *Hereditary Kings*.

He endeavours likewise to bring *Rufus* into the Number, upon the same foot of Testamentary Right : For he says, that *Rufus* being appointed by his Father's Will to succeed him in his Kingdom of *England*, had a good Title to the Crown, tho' his Brother *Robert* was alive, and endeavoured to obtain the Kingdom.

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(c) *Matt. Westm.* p. 435. (d) *Gul. Pictav. W. Malmsb. Ingulphus & Ordericus Vitalis*, as quoted by the Author of *Hereditary Right*. p. 25, 26.

22 Of the Succession, from Will. the Conq.

(e) But the Lords had so little regard to this Title, that they disdained at first to be subject to the Younger, when the Elder Brother was every way so well qualified to Govern and Protect them. But *Rufus* waving his Testamentary pretence, and promising to ease the People of their Oppressions, and to restore them to their ancient Liberties, was at length admitted to the Crown.

Our Author has produced a great many Authorities, to what purpose I cannot tell; For that the Conqueror made such a Will, was I believe never yet disputed. And not one of the Authorities that he has produced, do say, that *Rufus* succeeded to the Crown by Vertue of this Will; and 'tis plain that he did not (as I have before shewn) but by the Consent of the People.

I cannot but take Notice of (f) one Quotation, by which our *Author* would insinuate, that *Robert* upon the Account of the weakness of his Intellects was entirely unfit to govern; Whereas the (g) contrary is notorious to all, that know any thing of History.

One would think that *Henry I.* should have been given up as a *Non Hereditary King*: For our Author's Supposition of the Intention of his Father the Conqueror (as I have before shewn) is absurd. The (h) Quotation, that he gives us out of *W. of Malmsbury*, does not at all come up to what he infers from it: For the Author plainly means no more then to shew the Judgment of God, and the Effect of a Father's Curse on a Rebellious Son. But what if *Robert* had actually a Testamentary right, as well as Proximity of Blood on his Side? I hope if this appears, there will not be the least pretence even upon our *Author's* own Principle, to call

(e) *Matt. Westm.* l. 2. p. 12. (f) *W. Malmsbur.* as quoted by our *Author*, p. 37. (g) *Matt. Westm.* l. 2. p. 12. *Matt. Paris*, p. 18. (h) p. 37.

call Henry an *Hereditary King* (i) *Matt. Westm.* expressly tells us, That upon the Peace which was made betwixt Robert and Rufus, it was agreed, that if either of them died without Sons, the other if living, should be his Heir, and this Agreement was Sworn to by several of the greatest Men in the Kingdom. It could not therefore but be very well known; and therefore there can be no pretence, that Henry succeeded by any sort of *Hereditary Right*. On the contrary (k) all Historians agree that Henry was elected King, by the full Consent and Counsel of the whole Body of the Realm, assembled at *Winchester* for that purpose; In particular we are told by (l) *Matt. Paris*, that Duke Robert was in the Holy Land at the time of Rufus's Death, that the Barons considered that the Kingdom would be in Danger, should they wait for his uncertain return; And that Henry observing this, made Application to be elected King. After this, he tells us the Conditions on which he was chosen, upon the Confirmation of which by his Charter, they owned him to be their King, and he was consecrated accordingly. I hope Election here cannot be wiredrawn to signify a bare Recognition, seeing we have so full an Account, that all the particulars of an Election were observed in the most strict Sense of the Word: And besides, they could not recognize a Right, which was not in being, till they had created it. Indeed (m) some time afterwards, Robert in Consideration of a Peace, and 3000 l. per Annum, was content to wave his Pretences to the Crown. But Henry breaking this Agreement, Robert's right (if he had any) revived, and

(i) l. 2. p. 14. (k) *Gul. Newbrigenfis*, p. 359. *Matt. Westm.* l. 2. p. 22. *H. de Knight*. c. 8. 2374. *Brompton* 997. (l) p. 74. (m) *Matt. Paris*, 84. *Matt. Westm.* l. 2. p. 25.

24 *Of the Succession, from Will. the Conq.*

and *Henry* thereupon was again on my Adversaries Principles an *Usurper*. However he gets his Brother into his Custody, and puts out his Eyes. And (n) afterwards knowing by what Title he himself held the Crown, he endeavours by the same manner to secure the Succession to his Son *William*, and accordingly Summons a Council of the Lords, and other great Men, and therein procures the Succession of the Crown to be settled upon his said Son; (o) Though both *Robert*, and *William* his Son afterwards Earl of *Flanders*, were living at that time. Afterwards *Henry*, upon the Death of his Son, caused the Crown in the same Manner to be settled upon his Daughter *Maud*, though *Robert* was still alive, and his Son also.

* Our *Author* gives up *Stephen* as a Non Hereditary King, and indeed all (p) Historians agree, that without any pretence of Title, he was elected by the Estates of the Realm, upon a Promise, that he would preserve their Priviledges, and consent to good and wholesome Laws.

* Nor ought *Henry* the Second, to be admitted into the Catalogue of *Hereditary Kings*. For whatever right he might have from his Mother, he was content to drop that Title, and to claim as adopted Son of *Stephen*. For *Stephen* having lost his Son *Eustace*, came to an Agreement with *Maud* the Empress; That *Stephen* should be King during Life, and that after his Death, *Henry* her Son should be King: But that all *Stephen's* Paternal Estate, and several other Things, should go to his Bastard *William*. This Agreement was confirmed in Parliament, and published by K. *Stephen*. According to this Parliamentary Limitation, *Stephen* enjoy'd the Crown peaceably during Life; And *Henry* afterwards came to the Crown by Virtue of the same. And

(n) *Gervas Chron.* 1138 (o) *Chron. de Mailros* p. 168 * 42, 85. (p) *R. Hagulstad.* 1156. f. 312. (*) *Gervas Chron.* f. 340.

And (q) to shew how much he esteemed this Title, he summoned a *Parliament* to meet at *London*, in order to settle the Crown upon his Son *Henry*; But he dyed before his Father.

To *Henry II. Richard* succeeded, who I own had all the Right of Primogeniture. (r) But notwithstanding he summoned the Estates of the Realm, after his Father's Death, and suffered himself to be elected by them. And I readily grant that the next Heir has always a good Title to the Crown; If there be no legal Objection against him; Of which the Estates of the Realm are Judges.

The next succeeding King was *John*, who had not the least pretence to an *Hereditary Title*, *Arthur* Earl of *Britain*, and his Sister *Eleanor*, Children of his Elder Brother *Jeoffrey* being both then alive, and *Arthur* doing all he could to make good his Title. And yet the *Author* of *Hereditary Right*, would have him too to be an *Hereditary King*. The only *Author* that says any thing of the Testament of *Richard*, in favour of *John*, is *Hoveden*; who does indeed say, that *Richard*, when he despaired of his Life, devised the Kingdom of *England*, with all his other Lands to *John*, but as he is the only Historian of any Authority that mentions this Will, his single Testimony can have no great Weight, especially, when other Historians give us a very contrary Account of this Matter. For first 'tis certain, that (s) *Richard*, when he went to the Holy Land, by consent of the Estates, appointed *Arthur* his Heir: And if *Richard* would not put by his Nephew, and next Heir, in favour of *John*, before he went to his Wars, His Brother's base Behaviour in his absence, could never alter his Opinion in his Favour. For did not *John* raise a
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(q) *Gervas*, H. 2. f. 1412. (r) *Post tam cleri quam populi solennem & debitam Electionem. R. de dato f. 647.*
(s) *Chronicon de Mailros p. 179. & Flo. Hist. An. 1190.*

26 *Of the Succession, from Will. the Conq.*

Report, that his Brother was Dead? And did he not thereupon endeavour to supplant his Brother in his Crown? And was he not for this Outlawed at his Brother's return? How then can there be the least probability to suppose that *Richard* should on a sudden disinherit a promising young Prince, who had never offended him to make way for a Rebellious Traitor? Besides, if there were such a Will, why did not *John* mention it when he put up for the Crown? From the Death of *Richard*, to the Election of *John* there was at least half a Year, and yet during all that Time, we hear nothing of this Will, only of a great many Promises and Oaths made by *John*, to the Estates, assuring them how well he would govern, if they would but consent to make him King. Accordingly they elected him King: And at his Coronation, *Hubert* Archbishop of *Canterbury* made a Speech, in which there is not one Word of the Will, or of any *Hereditary Right* at all. But on the contrary, he says; That no one has a Title to the Crown, *nisi ab universitate Regni unanimiter electus. Unless unanimously elected by the People.* But that, *Siquis ex stirpe Regis aliis prapolleret, pronius & promptius in Electionem ejus esse consentiendum.* that is, *If any one of the Royal Family be more worthy than the rest, he ought to be preferred.* The Speech is at large in (t) *Matthew Paris*, and though it is not particularly mentioned in some other Historians; Yet as the Integrity of *Matt. Paris*, has never been yet questioned; And as he has given us many Circumstances that confirm the Authority of it; So it cannot be doubted but that *Hubert* actually made it. But our Author insists, that by the pretended Submission and Homage of *Arthur*,
John's

(t) p. 164.

John's Title became *Hereditary*, and for Proof of this, he refers us to *Matt. Paris*. But what that (u) *Author* says, does not maintain his Assertion. He says indeed, that *William de Rupibus* being entrusted with the Government of a certain City in *France*, and the Custody of *Arthur*, betrayed both to *John*, and then he uses this Expression; That after *William de Rupibus*, had delivered up *Arthur* in this manner, *Pacificavit eum cum rege Anglorum*: Which Words do not imply either a *Submission*, or *Homage*: Or if they did, such *Submission* and *Homage* being extorted from a Prince when betrayed to his Enemy, could surely be of no Force. Nay, the same *Author* says, that *Arthur* made his Escape the same Day he was betrayed; and therefore 'tis highly probable that the Service of *Homage* was not perform'd a great many Ceremonies being required at it, which could not be done in so little time. But as a farther Proof against this Assertion of our *Author*, (x) There is an undoubted Authority, that some Years afterwards K. *John* caused a Writ of Summons to be issued out against *Arthur*, requiring him to do *Homage* to him as his Sovereign Lord; and in this Writ there is no Mention made of any former *Homage* that he had done him, which would not certainly have been omitted if he had ever done any before. Our *Author* indeed cites another Passage to prove that *Arthur* did *Homage* to *John*. (y) But the Falsity of this I have already shewn, and it serves only to convince the Reader, that no such *Homage* was ever paid, for Arguments that are plainly false always make against him that uses them. To His Argument that *Arthur* acknowledged *John*, because he termed him King of *England*, (z) he has given an Answer

(u) *Matt. Paris*, p. 265. (x) *Rymer's Fœdera* Tom. 1. p. 128.
 (y) *Introduction* p. 12. (z) p. 64.

28 *Of the Succession, from Will. the Cong.*

swer himself in another Place of his Book. That hitherto *John* was no Hereditary King, I think, I have fully proved, and had *Arthur* sat down quietly and submitted to him as our Author pretends, 'tis probable that *John* would not afterwards have killed him with his own Hands.

But *Arthur's* Death did not mend *John's* Title, * for *Eleanor* was still alive; and that she had made no Cession of her Right appears plainly, from a long Imprisonment that she suffered to the time of her Death, which was not till the 21st of *Hen. III.*

I shall here just beg leave to observe, (as an Argument against Testamentary Right) that the Barons, in the time of *John* shew'd their utmost Resentment, at his Resignation of his Crown to the Pope. And if they would not allow that a King could resign a Crown, by the same Reason, he cannot give it away. If *John* had the Power pretended by our Author, to have been in *Richard*, then was his Resignation to the Pope of force; and to argue from his own Principle, the Pope is still our Sovereign Lord: For no Power but his own could divest him of an Authority he had once legally obtained. And from that Time King *John*, and his Heirs became his Subjects too; and if they afterwards usurped upon the Pope their lawful Prince, † several Ages and Descents could not purge the unlawfulness of such Usurpation. But perhaps this is a Consequence, that those I am disputing with, would be glad to run into.

But let us see how the Barons resented this Resignation, and on what Principles they denied its Validity. (a) *Stephen Langton*, the then Arch-

* *Hered. Right*, p. 62. † *Hered. Right*, p. 225. (a) *Matt. Parker Archiep. Cant. Hist. Eccles. Britan.* p. 150.

Archbishop, and the rest of the great Men of the Kingdom, protested against it as illegal, it being without the Consent of the Estates. And when the *Pope* pretended to skreen the King from their Fury, by telling them that he was now become his lawful Subject, and Leige-man, they utterly denied that the King of *England*, could dispose of his Crown, without their Consent, and accordingly they invited over *Lewis* the *Dauphin* of *France*, to come and accept of the Crown, which *John* had by this means forfeited. (b) And here I cannot but take Notice of a very remarkable Conference, betwixt *Lewis* and *Gualo* the *Pope's Legate* at *Lyons*, upon this occasion. *Gualo* alledged, that to attack *England* at this Time, was in effect to attack the Holy See, *John* being now no more than his Vassal, and whom the holy Father was obliged to protect. Upon this *Lewis* appealed to all the *Barons* of *France*, whether a King could have any such Power of disposing of his Crown without their Consent. To which they reply'd, that they would stand to it to their Deaths, that no Prince could of himself give away his Crown, or make it Tributary, and by that Means make Slaves of his People without their own Consent. Now as these Words were spoken by the *Barons* of *France*, where the King is known to have always had a much greater Power than ever any King of *England* had; so they are of the greater Weight, and the more to be regarded.

Lewis afterwards coming to *London* was elected King, swearing to preserve the Laws. But as he soon broke his Oath, it was not long before he was dethroned. It is, observable that in this Case the right of *Primogeniture* was not all regarded; for *Eleanor* was alive and Prisoner in *Bristol* Castle, which might have

(b) *Matt. Westm.* l. 2. p. 101. & *Matt. Paris.* 375.

30 Of the Succession, from Will. the Conq.

have been seized on as easily as several others. And then according to our Author's Principles, *Lewis* would have had no Pretence since the indisputable Title was in her. But the Arguments which the *Barons* went upon were of quite another Nature. For tho' they held that the Resignation of *John*, was not so valid as to give any right to the Pope, (c) yet it should be taken as a Forfeiture of his Crown; as if Tenant for Life make a Feoffment in Fee: He forfeits his Estate, and he in the Remainder may enter, tho' no rightful Estate passed to the Feoffee. So likewise *John* ceased to be King, the Throne thereby became vacant, and it was the Duty of the Estates of the Realm to provide a King for the Nation.

(d) Upon the Death of *John*, *Henry* his eldest Son succeeded, not meerly by Right of Inheritance; but the *Barons* after *John's* Death, having discovered a Design in *Lewis* to root out them, and their Posterity, agreed that *Henry* the III. then an Infant should be their King: Accordingly to move their Compassion, the Child was brought in amongst them, and thereupon the whole Assembly cryed out with one Voice, *fiat Rex*. And afterwards this Prince was frequently made sensible that the *Barons* did not forget their Right.

(e) And *Henry* himself had so small an Opinion of the Right of Primogeniture that he caused the Succession of *Edward* his Son to be sworn to in his own Life-time.

From thence to *Edward* III. I find no Alteration in the Succession.

Whatever Title *Edward* III. might have by Birthright, he did not pretend to succeed by it. Tho' our Author has been pleased, to look over him as if he was confessedly an *Hereditary King*.

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(c) *Matt. Paris* p. 376. (d) *Matt. Paris* p. 380. (e) *Id.* p. 703.

But all our (f) Writers agree, that he was elected in the Life-time of his Father, he being deposed by his Parliament for Male-Administration; who seemed to go upon this Principle, that in Cases of Extraordinary Necessity, they had always a right to interpose; when the Prince misled by evil Counsels, endeavoured to subvert and extirpate the Fundamental Laws and Liberties of the Kingdom; And during the long Reign of *Edward III.* 'tis remarkable that no Act passed to condemn this method. At the latter end of this Prince's Reign, we read of a dispute in Parliament, whether the Succession should go to *John of Gaunt*, the King's Eldest remaining Son, or to *Richard* the Son, of the black Prince. But the Memory of the Father (who was always so dear to the *English* Nation) prevailed in behalf of his Son. (g) Accordingly *Richard* succeeded, but having no regard for his Coronation Oath, nor the Laws of *England*, by which he was to govern; But endeavouring to set up an Arbitrary Power, and being notoriously guilty of Mis-government, the particulars of which are contained in 33 Articles (too long to be inserted here, but entred at large in the Records of Parliament) he was at length deposed by the States, and adjudged to have forfeited all his Right and Title to the Kingdom; And they asserted, that it was then lawful for them to chuse another of the Royal Blood, and that this their Proceeding was warranted by the ancient Laws and Customs of this Realm, and particularly by the just beforementioned President.

After this Deposition of *Richard*, *Henry IV.* was elected King by the Parliament: He made use indeed of some trifling Arguments to prove
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(f) *H. Knyghton*, 2250. *Polydor. Virgil.* f. 295. *Tho. Walsingham in vita* Ed. 2. f. 126. (g) *H. Knyghton* 2683.

that he had a Right; But the *Parliament* had no regard to them, nor did even he much insist upon them. And knowing that he owed his Right to the *Parliament*, and that this was his best Title; in the (b) 7th Year of his Reign, he procured the Crown to be entailed by Act of *Parliament*, first upon himself for Life, and then upon his Four Sons in Tail Successively. And by Virtue of this Entail, *Henry V.* and *VI.* succeeded.

This our Author does not deny, and therefore admits them to have been Non-Hereditary Kings: Which makes a very great gap in his (i) Prescription of 900 Years.

But now comes the Reign of *Edward IV.* our Author's Favourite Prince, and of whom he has made great Boast, though if I should give him entirely up; The Ballance is already so much against him, that he would not do him any good. But however I shall not part with him yet. Whatever was done in the beginning of his Reign, when the smart of Men's Wounds was still felt, ought not to be of much Weight. To form a Judgment of our Constitution, from Acts made at that time, when the whole Nation was in a Ferment, is a very unfair way: Besides all those Acts, that were made in Prejudice of the House of *Lancaster*, according to the Opinion of very great Lawyers (as (k) our Author himself owns) were repealed by the first of *Henry VII.* And both Houses of *Parliament*, upon the Conference concerning the Abdication were at last of the same Opinion; as appears by their agreeing to the Resolution, which that Argument was brought to establish. However, therefore our Author be of a contrary Opinion; It ought not surely to weigh any thing against such
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(b) 7 H. 4. c. 1. (i) p. 13. (k) p. 165.

Authorities as these: But what if it should appear that *Edward IV.* was no Hereditary King upon our Author's own Principles?

(m) By *Edgar's* Submission to *William* the Conqueror (he says) that his Right was extinguished.

(n) By *Robert's* coming to a Composition with *Henry*, and accepting of 3000 l. per Annum, He makes his Title to be effectually barred. (o) The same Consequence he draws from the pretended Pacification of *Arthur*, even though made when he was in Prison. And now by the same Rules let us try the Title of *Edward IV.*

Edmund Earl of March, Brother of *Anne*, from whom *Edward* derived his Title, did Homage to *Henry V.* and served him in his Wars in *France*; After this he did the same to *Henry VI.* at his Coronation. And this of it self is surely sufficient to set aside the Title of his Sister the Countess of *Cambridge*: As our Author makes the Submission of *Edgar*, and the pretended Homage of *Arthur*, conclusive against their Sisters.

* But besides all this, it appears, that *Richard*, the Father of *Edward* did several Times swear to be faithful to *Henry VI.* and owned him for his Sovereign Lord; As particularly upon his receiving the Investiture of the Earldom of *March*, afterwards when he was made Lieutenant of *France*; after this when he was made Lieutenant of *Ireland*, and after this again, when upon the King's Sickness, he was made Protector of *England*: And again in the 32d Year of his Reign, when he swore Allegiance to him at *Paul's Cross*. Nay, *Edward* himself took the same Oaths in the Convocation of the Province of *Canterbury*; If our Author after all this will still have *Edward* to

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34 *Of the Succession, from Will. the Conq.*

be an *Hereditary* King, let him give up all that he has said before, and he may take him as soon as he Pleases.

Edward the *Vths* Reign was short, and served only to make way for the Advancement of *Richard III.* Of him our Author says little, and really considering an Act of Parliament which was made in the first Year of his Reign, he did well to let him alone. For by that Act, *all the Children of Ed. IV. are declared to be Illegitimate.* And the *Duke of Clarence, having been attainted of High-Treason* in the 17th Year of *Edward IV.*: By reason thereof *all the Issue of the said George* (they are the very Words of the Act) are declared to be disabled and barred of all Right and Claim to the Succession: After which the Act sets forth the Claim of *Richard*, and then concludes with *chusing him to be their King, and entailing the Crown on him, and the Heirs of his Body.*

Now as I do not know that this Act was ever repealed afterwards, so it is still in force against our Author, both to prove that *Richard* was a *Parliamentary King*, and that upon his dying without Children, the House of *York* was extinguished.

Though *Henry VII.* had many Titles; Yet he thought fit to wave them all, and get the Crown settled upon him and the Heirs of his Body by *Parliament.* (p) Accordingly in the first Year of his Reign, an Act passed to this purpose, in which 'tis remarkable that there's no Recognition of any ancient Right; But only an Establishment of the Possession which he then had. Nothing therefore can be more evident than that he depended on his *Parliamentary Title*: He would never own that of the House of *York*, and this perhaps might be the Reason why he never repealed the Act, by which
his

(p) *Bacon's Hist. H. 7 Engl. Ed. f. 7, 8.*

his Queen was declared Illegitimate : And whatever Title the House of *Lancaster* had, it could not avail him ; Because his Claim was under a Bastard. Besides, his Mother the Countess of *Richmond* was alive during his whole Reign, and did not dye till after the Accession of *Henry VIII.* to the Crown, I shall venture therefore to add *Henry VII.* to my List of *Parliamentary* Kings.

As *Henry VIIIth's* Grandmother was alive, when he came to the Crown ; And as he succeeded by Virtue of a *Parliamentary* Entail, so he trusted but little to any *Hereditary* Right, as plainly appears from the several *Acts* of Parliament he procured for settling the Succession. By the first *Act* *Mary* was bastardized, and the Crown for (q) default of Heirs of his Body, lawfully begotten on *Queen Anne*, was limited to the Lady *Elizabeth.* (r) After this, there is another Statute repealing the former, declaring *Mary* and *Elizabeth* to be both Bastards, and settling the Crown upon himself, and the Heirs of his Body by *Queen Jane*, and for want of such Heirs with Power to him to dispose of the Crown by his *Letters Patents* or his last Will. (s) And lastly an *Act* passed to settle the Crown, first on his Son *Edward* and his Heirs, then on *Mary* and her Heirs, afterwards on *Elizabeth* and her Heirs, the remainder over to such Persons as the King should appoint by his *Letters Patents*, or his last Will, as before.

By force of this *Act* *Edward* succeeded, and after him *Mary*, and *Elizabeth* ; both of which being under a Sentence of Bastardy, could pretend to no right but what was given them by this Statute.

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(e) For

(q) 25 H. 8. c. 22. (r) 28 H. 8. (s) 35 H. 8. c. 1.

36 *Of the Succession, from Will. the Conq.*

(t) For to all our Author's Arguments which he has brought to prove their Legitimacy; I shall give this one plain answer, that they are all of them founded upon the Rules of the *Canon Law*, which unless confirmed by Act of Parliament is of no force here; Especially when it stands (as in this Case) in direct Contradiction to the Laws of *England*.

But he hopes that all these defects will be sufficiently made up by the Instance of King *James I.* (u) Who (as he positively affirms) *ascended the Throne of England, directly contrary to several Acts of Parliament.* (x) For he asserts the Validity of *Henry VIIIth's Will*, for Twenty Pages together; And then concludes, that if the Validity of this Will be once established, the other must inevitably follow. But as none of the Advocates of King *James* ever pretended to maintain his Title, if contrary to an Act of *Parliament*; But went always upon a Supposition, (y) that the Will was not pursuant thereto: So it appears from this very (z) Act of Parliament, upon which our Author so much insists, that he did not begin to have any right till after the Death of all those Persons, to whom by the Statute of *Henry VIII.* the Crown was limited before him. For *First*, they do not recognize his Right before the decease of *Elizabeth*, but her Title is also recognized in that very Act. *Secondly*, They recognize his right from the Day of the Death of *Elizabeth*, which plainly destroys his Right of Primogeniture, since *Mary*, and *Elizabeth* (as I have before shewn) had no other then a Parliamentary Title. They say indeed, that he succeeded by Birth-right: This I readily

(t) p. 213, 214, 215.

(u) p. 208.

(x) p. 186.

(y) p. 208.

(z) 1 Jac. I. c. 1.

dily own ; and this (as I have already observed) is certainly the best right, when it is not defeated by an Act of Parliament, and there is no legal Objection against it. Besides by Birth-right, he was Heir to the Entail made by Parliament to Henry VII. and the Heirs of his Body ; For the Entail by the 35 H. 8. being spent upon the Death of Queen Elizabeth, the old Entail did again take Place. And upon these Considerations, I shall venture to assert, that King James, likewise was a Parliamentary King.

And now I believe my Reader will be of Opinion, that our Author has but little Reason to brag of (a) his *Prescription* of nine Centuries, and his continual Claim of five hundred and fifty Years ; Which yet by the by is downright Nonsense, for a *Prescription* being much more than a *Claim*, that there should be a *Prescription* longer than there has been a *Claim* appears ridiculous at the first sight to every one that Understands the meaning of the Words. To prove his *Prescription*, he ought to have shewn that none but *Hereditary Kings* had been in Possession of the Crown, for nine Centuries together ; Whereas there might have been a continual Claim, though never any one *Hereditary King*, had been in Possession of the Crown. It appears plainly from the History of the Succession, that there's a great Majority of Precedents against him, so that this *Prescription* is entirely overthrown ; Nor has there been any such continual Claim as he pretends : Or if there had, what would it have proved ? The Bishops of Rome have for many Centuries, claimed a Right to be supreme Lords of England, : Have they therefore in Reality a Right

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to

to be so? I fancy whatever our *Author* may think, he will not venture to say so. But 'tis endless to follow him thro' all his Absurdities.

From this Chapter it appears, that the History of the Succession since the *Conquest*, when set in a fair light, concludes as strongly against our *Author*, and his Notions of *Hereditary Right*, as the History of the Succession in former Times; And from both it is evident, that (though the Succession of the Crown has generally went in the same Family, and though *ceteris paribus* the next Heir has the best pretence to the Crown) yet the *Estates* of the *Realm* have in all Ages not only claimed, but exercised the Power of *limiting and binding the Crown*, and the *Descent and Inheritance* thereof.

C H A P. IV.

Of the Authority of Kings de facto, and how far Allegiance is due to them.

THE *Author* of *Hereditary Right*, the better to confound his Readers, has jumbled together a great many Inconsistencies, about Kings *de facto*, and *de jure*. (b) Sometimes he spends ten Pages together, to prove that *Oliver Cromwell* was as much a King *de facto* as any one; and then we are told, *there is no difference betwixt Possessors by Force and Consent*: Though at another time he positively asserts, (c) *That Right can never be produced out of force*, and yet owns that a King by Consent may have a Right to the Allegiance of a People: (d) For he says, *That the three Estates have a Right to bind themselves, and their Posterity*. One while he

(b) p. 1. to p. 10.

(d) p. 15.

he(e) derives the Title of a *King de jure* from one that was confessedly but a *King de facto*; And yet in another place he positively affirms, (f) that *Descents how many soever cannot purge an Usurpation*. But I shall leave these to answer one another.

My design is not to puzzle the Case, but to set it in as clear a Light as I can, and therefore I shall in the first Place shew what I mean by the Terms *de facto*, and *de jure*.

Of *Kings de jure* (as that Expression is generally understood) there are two Sorts.

First, Such as have a Right of Primogeniture, and were for some time in Possession of the Crown. But were turned out of that Possession.

Secondly, Such as have the same Right, but could never obtain the Possession.

The latter of these are very improperly stiled *Kings de jure*, because they were never Kings at all; And neither of them in the Eye of the Law are of any Consideration. *It has been always the Opinion of our Lawyers; That wherever the King is named in our Laws; It relates only to Kings de facto*, as shall be particularly shewn in this Chapter. But I shall not quarrel about Terms, since if they be but understood, 'tis all that is necessary.

A *King de facto* (in Opposition to the other) is one of the Royal Family, who being recognized as King by the three Estates, acting freely and without Compulsion, is thereupon in quiet Possession of the Throne, suffers the Constitution to continue as it was, and governs according to Law.

A *King de facto* is a Creature of the Law, and therefore he that comes in contrary to Law, and exercises a Power above the Law, cannot be a *King de facto*. He is not a King according to our Constitution, and so has no right to our Allegiances: He does not protect us according to Law,
and

and consequently we are under no reciprocal Obligation, to pay him a legal Subjection.

* *The being of the Blood Royal*, I have made part of my Definition, though (g) Sir *Thomas More*, and several other Lawyers do not think *that* necessary. But as there are no Precedents since the Conquest, and but very few before, of Kings that were not of the Blood Royal, so I did not think proper to omit it; And besides, it appears from *Hubert's* Speech which I have mentioned in the foregoing Chapter, that though the Power of appointing a Successor, was always in the Estates of the Realm, yet they were tied down to the Royal Family; And with this agrees the Declaration of the Lords and Commons, in the Case of *Richard II.* where they assert that they have an undoubted right to depose a King for Male Administration, and to elect another of the Royal Family.

Our *Author* make use of the Word *de jure* in another Sense from what I have explained it, and applies it to such Kings *de facto*, as had a Right of Primogeniture. But I cannot see any Grounds for this Distinction, since he that is a King *de facto* according to my former Definition, is as much King to all intents, as if he had the Title of Birth-right.

From my Definition of *King de facto*, it appears plainly that *Oliver Cromwell* had not the least pretence to be so: He was not of the Royal Family, he was never recognized by the Estates, he supported himself in his Government, as he first obtained it by violence; He destroyed almost every part of our *Constitution*, and governed according to his own Will, and not according to Law.

But our *Author* endeavours to set his Friend *Oliver* upon a level with all Kings *de facto* by (h) telling us, That (tho' he was not recognized in Parliament, yet)

(g) *Lord Henbert, Hist. H. 8. p.*

(h) *p. 8.*

yet) he was owned by the diffusive Body of the People ; That he was acknowledged by the Judges ' the Sheriffs, the Justices of Peace , and the ' Grand Juries, (i) That he was with fear and ' trembling courted by all Foreign Nations, and ' that the People of *England* found it necessary to ' endure his Tyranny with Patience and Resignati- ' on. Now if some of these Arguments are of force, I can prove that a *Cutthroat* or a *Robber* may be as good a King *de facto* as *Oliver*. That he was owned by the diffusive Body of the Nation stands for just nothing at all, for as 'tis impossible that the diffusive Body of the Nation should freely declare their Sentiments, so they have no other way of doing so, but by their Representatives duly elected in Parliament. His Argument from the Acknowledgment of the Judges, &c. is certainly the merriest that ever was. Mr. *Cromwell* seizes upon the Government, and makes several of his Creatures Judges, Justices, &c. And then these Judges and Justices, out of great Gratitude, and not without some regard to themselves, recognize Mr. *Cromwell's* Title : But to mention this, is sufficient to ridicule it.

Now in Opposition to all my Author's Arguments, I shall venture to assert that a King *de facto* according to my Definition, is the King to whom Allegiance is due ; And that all his Acts are valid, tho' the Right of Primogeniture is in another : For this Right is extinguished, when another is placed on the Throne by the Estates ; It was at first a pretence rather than a Title, and becomes nothing when rejected by Parliament, as is evident from my History of the Succession. Whatever disputes there may be about the Right of any King before his Recognition by the three Estates, they are thereupon immediately terminated ; And
when

(i) p. 243.

when his Right is thus legally defeated, he is improperly stiled *King de jure*. For to what has he a Right after this? Not to the obedience of any of the People; for there cannot at one and the same Time be two Kings of the same Kingdom to whom Allegiance is due. No Man can serve two Masters, and of what therefore is he King? For if he be a Master where is his Authority? If he be a King, where are his Subjects? It is owned by the (k) Advocates for *Kings de jure*, that 'when the Subjects dont know who has the Right (that is, when the Right is dubious). they are to pay their Allegiance to the *King in Possession*, and the Reason, is not only because he is King in Possession; But because he being in Possession, and no better Right appearing, his Title is presumed to be just and lawful, and so he is supposed to be King, not only *de facto* but *de jure* till it appear that some other Person has a better Right to the Crown; According to the old Rule *in rebus duobus melior est conditio possidentis*; And this is founded upon the Opinion of (l) *Sanderson*. With which likewise our Author in some Measure agrees when he (m) says, That the Rights of Princes ought always to be presumed till the contrary is made evident. By what Judges therefore is this to be tried? Not by the diffusive Body of the People, for they are to presume for the Possessor: Not by the Competitors themselves, for no Man can be a Judge in his own Case: It remains therefore, that the Parliament alone can be Judge betwixt them; and consequently when the Parliament has determined it for either, the Subjects must pay Allegiance to him, and the other has no Right at all.

(n) My

(k) *Brown's Case of Allegiance to a King in Possession*, p. 2. (l) *De conscient. obligat. prælect.* 5. Sect. 15. (m) p. 60.

(n) My Lord Coke says, that a King *de facto* is a King within the 25. E. 3. and that Treason can only be committed against a King *de facto*, and not against a King *de jure* when he is out of Possession: And my Lord (o) Hale expressly says the same. The Authority therefore of our Author will not with me have much Weight against such Authorities as these. And tho' he quotes several Passages out of a pretended MS. of my Lord Hale which seem to contradict this, yet they ought not surely to be much regarded; since 'tis easier to suppose that our Author has been guilty of a false Quotation, than that so great a Man as my Lord Hale should contradict himself.

Notwithstanding all that our Author has said, I do still insist that the Grants &c. of K. Hen. the VI. (who is acknowledged by him to be a King *de facto*) were adjudged good in the Case of Bagot. Our * Author in his learned Dissertation on that Case, has proved nothing else, but that he did not understand any thing of Law. For first, he makes use of the Word *Plea* and *Pleading* (as the Vulgar generally understand them) to signify the Arguing of Lawyers at the Bar, and then says, that it does not appear upon which of the Pleadings the Judges founded their Judgment. 2dly, He says that it was affirmed by Bagot, that he was born of English Parents in *Normandy*; and that might possibly be the reason that the Judges went upon, in giving their Judgment, and not the Validity of King Henry's Grant.

To this I answer, that a Plea is what is alledged upon Record, and that as a Man can plead but one Plea, so if the Judges give Judgment for him, that must be the single Foundation of their Judgment. The * * Plea of Bagot in this Case was that

(n) 3 Inst. p. 7. (o) Pleas of the Crown p. 12. * p. 110.
10 127: * * Tr. 9. E. 4. f. 5, &c.

‘ that he and his Heirs were made *Denizens*, by the
 ‘ Letters Patent of *Henry VI.* At the end he avers
 that he was born in *Normandy*, but this is no part
 of the Plea, but he averred it, because it was
 said in the Patent that *Bagot* was born in *Norman-*
dy, and therefore he thought it necessary. But it
 seems it was not ; For † whether he was born in
Normandy or not, was not at all material, neither
 could it have been put in Issue. †† There is in-
 deed a *Protestando* that he was born of English Pa-
 rents, but this stood for no more, but to prevent
 his being concluded to say ever afterwards that he
 was, and this could not be considered in their
 Judgment. The whole matter therefore stands
 thus. *Bagot's* Plea was the Patent of King *Henry.*
 The || Judges of *B. R.* after a Conference with
 the Judges of *B. C.* gave Judgment for *Bagot*,
 therefore I do affirm that the Judges did adjudge
 the said Patent to be good. Nay, I shall venture to go
 a little farther: When a Reporter sets forth the Ar-
 guments of the Council on both sides, and then tells
 us that the Judges gave their Judgment for the *Pl.*
 without shewing the reasons that they went upon ;
 it is strongly to be presumed that the Arguments
 which induced them to give Judgment for the *Pl.*
 were those that were mention'd by his Council. The
 * * Arguments therefore that are here produc'd by
 the Council to support the Validity of *K. Henry's*
 Patent, ought to be looked upon as Law, because
 the Judgment of the Judges is general, and no rea-
 son is given for it. And yet our †† Author
 according to his usual Fairness, endeavours in
 this Case to set the Arguments of both Sides upon
 a Level with one another.

Our Author's Case of *Ralph Grey*, makes
 neither

† *Tr. 9. E. 4. f. 11, 12.* †† *f. 6, 7.* || *f. 12. a.* * *
P. 9. E. 4. f. 1. b. ††† *p. 114.*

neither for him nor against him, and so he might as well have let it alone.

But tho' our Laws had been silent in this Point, yet it follows from the Law of Nature, that Allegiance is due to a King in Possession, and to such a King only. For Protection is the Cause of our Allegiance, and therefore it is due to him that protects us; and not to him who is not able, or else refuses to do so: As in the next Chapter shall be particularly shewn. And this likewise is farther proved both by the Precept and Example of *Christ* himself, for he not only commanded the *Jews* to pay Tribute to *Cesar*, because *Cesar* protected them; But was content to pay Tribute also, tho' Heir of the Throne of *David*.

* Our *Author* has shewn his great Learning, in his tedious Account of old Coins; but as what he says is nothing to the Dispute about Kings *de facto* and *de jure*, so I shall leave it to stand unanswered.

If we look back on our own Government as well as on all others: We shall find that some or other of the Ancestors of the present Possessors, did get the Crown by Usurpation. And if so (according to our *Author's* own Principles) how long soever ago that may be, yet the Interest of the Right Heir can never be extinguished thereby, and consequently whenever he makes his Claim, † all Oaths to the present Government immediately become void, and our Allegiance is transferred to him. ' For nothing (|| says he) but a temporary Allegiance is due to a King *de facto*, which ceases upon * any Opportunity to restore a King *de jure*. That is, an Allegiance is due to a King *de facto*, but such as will permit any Man to cut his Throat, if he can hereby restore the King *de jure*. An excellent loyal principle *this*, worthy to be encouraged by every

* p. 150, 10 166. † p. 97. || p. 129.

ry Government, and much tending to the Peace of a Nation!

Our * Author upon this Foot justifies the revolt of *Robert Earl of Gloucester*, though he had done Homage to *Stephen*. But the *Historians* of that time give us a very different Reason for it. † They tells us, that King *Stephen* broke his Oath, both to Earl *Robert*, and his Sister; and †† that the Earl did Homage to *Stephen*, with this expresse Condition, that he should preserve his Dignity to him, which Condition being broke by *Stephen*, *Robert* thought himself at Liberty.

Had these Principles of our Author, been understood in the Days of King *John*, 'tis strange that the Barons should never make use of them to justify their Departure from their Allegiance; And indeed, the only time when they were taught, was in the time of the Contests betwixt *York* and *Lancaster*, from whence it is very absurd to form a Judgment of our Constitution. The Resentments of Men just after a Victory render them incapable of determining any thing with Sedateness. If the Acts of the House of *York*, ought to be conclusive against the House of *Lancaster*; By Parity of Reason, those of the House of *Lancaster*, ought to be conclusive against the House of *York*, for ** both pretended to be *Kings de jure*, and either both or neither must be allowed to be Judges in their own Case. So that all his Arguments about these two Houses, prove nothing at all: Or rather they make for us, for the last Act is on our side, namely the 1 *H. 7.* by which all the Acts to the Prejudice of the Title of the House of *Lancaster*, are repealed in

* p. 45, Sc. † *Mat. Wesim. l. 2. p. 35.* †† *Mat. Paris, p. 100. Comes Robertus sibi Homagium fecit sub conditione. Sc. si Dignitatem suam sibi servaret illibatam, secundum illud antiquum Proverbium quamdiu habebis me pro senatore & ego te pro imperatore.* ** *Herod. Right* 109.

in exprefs Words. And as this Act is ftill in force, fo all the Acts of the Houfe of York, and the Reafons on which they are founded are at prefent of no Authority. In the firft Year of this very Prince, an Act paffed to attaint *Richard* his Predeceffor, and fuch as adhered to him. But this being obtained in the heat of Blood, was condemned by the * *Historians* of thofe Times; and *Henry* himfelf when he was grown cool, entirely condemned this his own Proceeding; for in the 11th of his Reign, an Act paffed, by which it is declared, that *Allegiance* is due to the King for the time being, and that all fuch fhall be indemnified as take up Arms in his Defence. By this all former Acts that go upon a contrary Principle, are not only actually repealed, but declared to be founded on Injuftice, and fo null in themfelves. But I cannot give a truer Character of this Act than is given by my † *Lord Bacon*, and therefore you fhall have it in his own Words: *The Spirit of this Law* (fays he) *was wonderfully pious and noble, being like in matter of War, unto the Spirit of David in matter of Plague, who faid, if I have finned ftrike me, but what have thefe Sheep done?* Our Author's Arguments to prove that this Act was not designed for a King *de facto*, being not only very trifling,

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* *Continuatio Hift. Croylandenfis* p. 581, *Inter cetera factæ funt proſcriptiones (quas vulgares attainſta vocant) de triginta Perſonis, quæ res tamenſi longe modèſtior quam aliqua ſimilis quæ aut Regis Richardi aut Regis Edvardi temporibus viſa fuerit non tranſit tamen ſine multa Diſputatione ſeu ut verius dicam, increpatione geſtorum. O Deus! quam ſecuritatẽ habituri ſunt deinceps Reges noſtri ut in die belli ſuorum ſubditorum preſentiis non fraudulentur qui vocati ad terribile nimis Regis mandatum Regia quidẽ parte ut ſæpe viſum eſt fortæſſe declinante ſeſe vita fortunis atque omni Hereditatẽ nudatos intelligent.* † *Hift. Hen. 7. Engl. Ed. fol. p. 83.*

but contrary to the universal Opinion of the Lawyers and Historians ever since, it would be doing him too much Credit to repeat what he says. But he pretends that the Dispute is determined by the 1st of James I. which *Act* (as || I have already observed) he would have to be an original Contract, by which the People oblige themselves to defend King James and his Progeny to the last Drop of their Blood. And here I cannot but observe that tho' original Contracts are exploded when they any ways favour the side of Liberty, yet they are thought to be good Arguments on the side of arbitrary Power. But if this be a Contract on the part of the People, I hope since it refers to his Majesties Speech so replete with royal Wisdom; That Speech will be allowed to be a Contract, or at least a Declaration *ex parte Regis*. And in that Speech he ** tells his *Parliament*, that after he had performed all that he promises therein, he should still be but *inutilis Servus*, and that without Subjects he could be no King, From whence it follows, that a King *de jure* in Opposition to a King *de facto* is no King at all. But tho' I should grant that this *Act* was only a Covenant on the part of the People; Yet it does not appear to be altogether absolute, and without any Consideration: For they say that his Majesty is by God's Goodness, more able to protect them than any of his noble Progenitors: And then immediately follows their Promise to stand by him and his Progeny to the last Drop of their Blood; from which 'tis plain, that tho' the Parliament at that time were disposed to flatter their new King, yet they did not forget that his Right to their Allegiance, was chiefly founded on his Ability to protect them.

But

|| Introduction p. 14. &c. ** A. Wilson's *Hist. of James 1st in the Hist. of England* p. 672.

But be this as it will, it is plain from the * Opinions of those two great Lawyers my Lord Coke and my Lord Bacon (who were both in that Parliament, and in all Probability the Compilers of this Act) that this Act was never intended to repeal that of Henry VII.

Nor is the Authority of this Act of King Henry, in Favour of Kings *de facto*, contradicted by the 12th of Car. II. upon which our Author so much relies. For those only are condemned by that Statute who acted under the Authority of Cromwell, and the other usurped Powers, which (as I have already shewn) had no Right to command the Allegiance of any one, because their Government was contrary to our Constitution, nor had they any Pretence whatsoever to be set upon the Level with Kings *de facto*.

To our †† Author's Argument against the Authority of this Statute, from an ††† Act passed in King William's Reign (which absolves Subjects from their Allegiance to any King of England, as soon as he professes himself a Papist) I shall give this short Answer, that since that Act every King of England ceases to be so upon his professing himself a Papist. He is not the King for the time being but is to be considered from that time (they are the very Words of the Act) *as though he was naturally dead*, and consequently no Allegiance is due to him by the 11th of Henry VII. So that this Argument proves nothing. But here I cannot but take Notice, that tho' this Act of William was made in the Convention Parliament, yet our Author allowed it to be of Force, when he thought it would be for his Purpose, for which I heartily thank him.

As our Author has taken great Pains to set aside the Authority of King Stephen, and consequently

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of

of all *Kings de facto*, so I shall give him a particular answer, † he says, ' That even during the ' Reign of *Stephen*, the Empress *Maud* created ' *Milo* Earl of *Hereford*, *Geoffrey* *Mandeville* ' Earl of *Essex*, and *Robert de Sigillo* Bishop of ' *London*, and that *Stephen* did not pretend to deprive them. Whereas on the other Hand, ' *Henry II.* when he obtained the Crown, deposed the Noblemen made by *Stephen*, as mere ' imaginary Earls and Lords. It may be observ'd, that *Maud* the Empress at the time of her creating those Lords, was actually Queen in Possession, and therefore what he says of her Creations, makes rather against than for his Hypothesis. In the †† Charter of *Milo* Earl of *Hereford*, it is expressly said that *Stephen* was at that time her Prisoner; And ††† *Geoffrey* was created Earl of *Essex*, both by *Maud* and *Stephen*. It is true indeed that *Henry II.* did depose some false *Earls*, that were made by *Stephen*, and to whom he had alienated almost all the Possessions of the Crown. But the Earls which he deposed were all of them Aliens who were by Law incapable of being made so; And I shall shew that several of *Stephen's* Earls continued to enjoy their Honours, during the Reign of *Henry II.* which is sufficient to overthrow my Author's Argument.

William de Albineto was created E. of *Arundel* by *Stephen*; And *Aubrey de Vere* was made E. of *Oxford* by *Maud*, after she was recognized as Queen || Now both these Earls had new Grants of their Annuities from *Henry*; But the Earl of *Arundel* took place according to the Seniority of his Patent. Which plainly shews that *Stephen's* Power of creating

† p 55. †† *Selden's Titles of Honour*, p. 650. †††
 Id. 648. || *Selden's Titles of Honour*, p. 51.

ting Lords, was acknowledged, for otherwise the Patent of *Aubrey Earl of Oxford*, would have been Prior to the Earl of *Arundels*, and consequently the precedence would have belonged to him. So † *Stephen* in the beginning of his Reign made the Eldest Son of *David King of Scots*, Earl of *Huntingdon*, which the Posterity of that King, by Vertue of such Creation enjoyed long afterwards. So †† *Gilbert de Clare* was made Lord *Tunbridge*, and Earl of *Hereford* by *Stephen*, and these Titles continued in his Family many Years afterwards. ††† So *Reginald* a Bastard to *Henry I.* was made Earl of *Cornwall* by the same Prince, and enjoyed it to the time of his Death, in the Year 1175. Whatever therefore Depositions *Henry II.* might make for particular Reasons of State, I think these Instances are sufficient to confirm the Authority of *Stephen*.

The present Duke of *Kent* was made Earl of that Name by *Edward IV.* Yet I do not find that *Henry VII.* ever declared his Title null, or forced him to take out a Confirmation of it; Though by the first of that King, the Title of the House of *Lancaster*, was declared to be the Legal Title, and the Kings of the House of *York*, to have been but Kings *de facto*; So in the Attainder of *Richard*, and his Accomplices, the Title of *John Howard*, Duke of *Norfolk*, is acknowledged, though it was conferred on him by *Richard III.* And as the last Authorities are always the best, I think these two Instances may serve as a sufficient answer to all that our Author * has said of the Invalidity of the Grants, &c. of the three succeeding *Henries*.

To his Argument against the Authority of Kings *de facto*, because several of the Acts of the

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Kings

† *Milles Catalogue of Honours*, p. 81. †† *Id.* p. 331.
Id. ††† p. 550. * p. 136, &c.

Kings of the House of *Lancaster*, were confirmed by the Kings of the House of *York*; whereas on the contrary, those of the Kings of the House of *York*, were never confirmed by the Kings of the House of *Lancaster*; I shall give this short answer: That this appears to be absurd in it self, because *all the Kings of the House of *Lancaster*, pretended to be Kings *de jure*, and esteemed those of the House of *York* as Usurpers, and therefore there was the same Reason that the Acts of the one should be confirmed as of the other.

Though I have already dwelt too long on this head, yet I cannot but take Notice of one more Instance of our Author's great Insincerity in quoting a Passage out of the first of *Edward IV.* † His Quotation runs thus, ' That King *Edward IV.* ' at the Request of his Commons, did confirm all ' Titles of Honour conferred by the House of *Lancaster*, upon this Condition, that the said Noblemen should have new Grants from him of ' their Annunities, for the Sustentation of their ' Estates: He quotes this indeed out of the Records of Parliament, but I shall rather believe that he has industriously misquoted them, than that they and the †† Statute Book disagree. Now the Words in the latter are thus, ' That they being ' so created and ennobled, shall have new Grants of ' the King of their Annuities, for the maintenance of their Estates, as hath of old time been ' accustomed, &c. We plainly see what a different sense arises from the Words, as he hath quoted them, and as they are in the Statute Book. From the first one would be apt to conclude, that this taking out new Grants of their Annuities was designed as an Acknowledgment of the Deficiency of their Titles; Whereas by the latter, it plainly appears, not only that it was insisted on by them

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* *Hered. Right* p. 109. † p. 136. †† 1. Ed. 4. c. 1.

Of the Obligation of Oaths, and Nonjurors. 53

on their part, that the King should make them such new Grants, but that it had been always Customary for such Grants to be renewed upon the demise of every King.

I shall conclude the Chapter with this one Observation, thar the Advocates of Kings *de facto* seem to go upon this gross mistake. *That the Right of a Prince is of more value then the Happiness of a whole Nation, and that therefore the latter must be sacrificed in order to the Recovery of the former.* Which Position is directly contrary to the Original design of Government.

C H A P. V.

Of the Obligation of Oaths; and of Nonjurors: shewing how far even they owe Allegiance to the Government.

THE Scripture tells us, * *That an Oath for Confirmation, is the End of all strife*; † And that *he who sweareth to another, must not disappoint him, tho' it were to his own hindrance.* But our Author says, †† That an Oath was not instituted to be a Bond of Iniquity. ††† That the *Piercies* did not act dishonourably [according to the Sentiments of the Times they lived in] when they took an Oath to *Henry IV.* which at that very instant they believed they ought not to keep. ‖ That if it has been the Custom to take Oaths to *Kings de facto*; It has also been the Custom to break them ** That the *Duke of York's Oath to Henry VI.* did not bind him, because if he had not

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‘ taken

* Heb. 6. 16. † Psalm 15. 5. †† p. 97. ††† p. 89.
‖ p. 92. ** p. 97, 98.

§4 *Of the Obligation of Oaths, and Nonjurors.*

‘ taken it, he had exposed himself and his Family
‘ to inevitable Destruction ; * And that the *Oaths*
‘ of the Lords to *Henry VI.* might be excusable by
‘ their Ignorance of the Facts, necessary to clear
‘ the Right of the lawful Heir ; But that after-
‘ wards upon his claiming and asserting his Right,
‘ they were obliged not to keep them. Because
‘ an *Oath* taken in Prejudice of a superior Right
‘ is not valid ; and because an *Oath* due to one,
‘ but made to another, is unlawful, and is to be
‘ performed to him, to whom it was due. Now
these Doctrines are not only contrary to the
Scripture Rules ; But they leave Men at Liberty,
under pretence of better Conviction to break
Oaths whenever they please ; and consequently de-
stroy all Faith, and may serve to justify the worst
of Villanys : Nay, they go even farther, and give
Men leave to take an *Oath*, though at the very
time of their taking it, they are resolved not to
keep it. At this rate a Prince can have no Security
from the *Oaths* of his Subjects, though taken in
the strongest Terms possible. For how can he be
assured, that afterwards they may not be convinced
that they were illegal, and consequently that they
are obliged to break them ; Nay, that they did
not think so at the time of their taking them, and
so never intended to keep them ? For what End
these Principles are calculated, and what Influence
they are designed to have upon the Minds of the
People of this Nation, is too plain to need a Com-
ment. But here perhaps I shall be asked whether
Subjects can never be discharged from their *Oaths*
upon any Consideration whatsoever. To this I
answer, that they may, but not upon pretence of
a subsequent Conviction, that another Prince has a
better Title, much less, because at the time of their
taking them, they thought they were illegal, and
ought

Of the Obligation of Oaths, and Nonjurors. 55

ought not to be observed. But as all Government Oaths are conditional; so if a Prince entirely withdraws his Protection, The People must of necessity be discharged from their Oaths; otherwise the very end of Government would be destroyed, which is the Good and Happiness of Mankind. If a Prince Abdicates his Kingdom, and leaves his Subjects defenceless, whereupon another of the Royal Blood takes Possession of the Throne, and is acknowledged by the Estates of the Realm, and governs according to Law; The People are no doubt from that time discharged from their Oaths to the abdicating Prince; For *cessante causa cessat effectus*, and the Cause and Foundation of their Oaths ceaseth. So if a Prince upon pretence of a better Title makes War against the Prince to whom I have sworn, I am obliged to defend my Prince to the utmost of my Power, at the hazard of my Estate, my Liberty, or my Life, so long as 'tis possible to do him Service. But if after all that I can do, my Prince is entirely defeated, and the other gets into the Throne, is recognized by the three Estates, and suffers the Constitution to continue as it was, I may then lawfully obey him as such, I have entirely discharged my Conscience, The Obligation of my Oath ceases; And if I remain in the Kingdom, I must not resist the governing Power, for the Power that is, is ordained of God. Or at least, if I think otherwise, I must resolve to leave my Country, and not continue to enjoy his Protection, to whom I am determined to deny my Allegiance.

And as our Author has endeavoured to find out a *Salvo* for those that have taken the Oaths; So he goes on further, and would insinuate, that those who have never taken them, are under no Obligation at all, for * he thinks it allowable to call the *Fryars Minors* in the Reign of *Henry IV.* *Nonju-*

rors;

56 Of the Obligation of Oaths, and Nonjurors.

rors, because they were not obliged in those Days to take the *Oaths of Allegiance*. And by this means he endeavours to justify them for taking up Arms against the King.

To which I answer.

First, That those who have never refused the Oaths, [as being not obliged by the Law to take them] are improperly stiled *Nonjurors*.

Secondly, That *these*, if they resist the established Government, are as much guilty of Rebellion, as if they had taken the *Oaths*.

Thirdly, That even those who have refused them, and who are therefore properly *Nonjurors*, do notwithstanding owe *Allegiance* to the Government, so long as they continue under it, and enjoy the Benefit of its Laws and Protection.

The *first* is too plain to be denied, that the Word *Nonjurors* in its proper Signification, and Common Usage, imports only such Persons as are obliged, but refuse to take the *Oaths*.

That those who have never taken the *Oaths*, as being not obliged by the Law to do so, do yet owe *Allegiance* to the Government, may be proved by indisputable Arguments; For otherwise a great Majority of this Nation, may rebel whenever they think fit, being under no Obligation to the contrary. 'Tis well known that not one in ten is obliged by Law to take the *Oaths*; And yet none I believe will be so hardy as to affirm, that the rest are not obliged in Conscience to pay Obedience to the Government: There is an Obligation prior and superior to the *Oaths*, by which every Man is bound to obey and defend the established Government, namely that Obligation which every Prince lays on his Subjects, Who Protects and Governs them according to Law. The Benefits that they enjoy under his Government, necessarily require their *Allegiance*, of which reciprocal Obligation, † *Sanderson* thus Expresses himself, *Exigit hoc a*

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† *De Obligat. conscient. præf. 5. Sect. 18.*

Of the Obligation of Oaths, and Nonjurors. 57

nobis [optima equi bonique lex] vetus illa commutationum formula Δοσ τι και λαβε τι. And therefore the same † Author tells us in another Place. *Qui non juravit principi, non minus tamen ei debet, quam si juratus esset.* The Subject before he has taken the Oaths, is under the same Obligation, in respect to his Prince, though not in respect to God as afterwards: If he resists before, he is equally guilty of Rebellion; Or if he neglects or refuses to defend him, he is equally defective in point of Allegiance. But if he resists afterwards, he adds Perjury to Rebellion; For the Oath in the sight of God induces a new Obligation, according to the Rule of †† Sanderson, *Lex humana potest priori Obligationi novam superinducere obligationem, ut si prohibeat rem simpliciter malam, aut jubeat rem bonam, novam obligationem inducit in conscientia.* My Lord Coke in *Calvin's Case* says, there are four sorts of Ligeances, Natural, Acquired, Local, and Legal. The first every one that is born in *England* owes to the King, though he has never taken the Oaths; but the last not till after he has taken them. After the Oath there is a *duplex ligamen* on the part of the Subject: But before, there is a natural ligeance due, for this reason as my Lord Coke says; 'Because as the King is to govern and protect his Subjects, so the Subject oweth to the King, true and faithful ligeance; For betwixt the Sovereign, and the Subject, there is a *reciprocum ligamen, quia sicut subditus tenetur regi ad obedientiam, ita rex subdito tenetur ad protectionem.* He proves likewise from several old Authors, That the Oath of ligeance was first instituted by *Arthur King of the Britons*. And surely it can never be thought, that the Subjects of this Kingdom

† Prelect. 5. Sect. 16. †† Prelect. 5. Sect. 10. ††† Rep. 7. f. 5, 6. C.

§8 Of the Obligation of Oaths, and Nonjurors,

dom before that time owed no ligeance to [their Sovereign. I do therefore conclude as my Lord Coke does in this very Place, ' That hereby it plainly appeareth, That ligeance doth not begin with the Oath, but that Men owe true Allegiance, although they were never sworn.

That those who have refused [tho' obliged by Law] to take the *Oaths*, do notwithstanding owe Allegiance to the Government, so long as they continue to live under it, and enjoy the Benefit of its Laws and Protection, will appear from the reason of the foregoing Arguments, if considered a little farther. For why do those that have never taken the *Oaths*, owe Allegiance to the Government? Namely, as my Lord Coke says, because they enjoy its Protection. ' It is holden [saith he] in the 20. H. 7. f. 8. That there is a Liege or Ligeance betwixt the King, and his Subjects; And therefore in several Acts of Parliament, the King is called the Liege Lord of his Subjects, and the Subjects his Liege People: With which agreeth Skene in his Book *de expositione verborum* Ligeance is the mutual Bond between the King, and his Subjects; the Subjects are called his Liege Subjects, because they are bound to obey and serve him; and he is called their Liege Lord, because he should maintain and defend them.

• For it is truly said, *Protectio trahit subjectionem, & subiectio protectionem.*

From whence I argue thus,

All those who enjoy the Protection of a Government owe Allegiance to it.

But those who refuse to take the *Oaths*, do yet enjoy the Protection of the Government, so long as they live under it, and reap the Benefit of its Laws.

Therefore the owe Allegiance to it.

Of the Obligation of Oaths, and Nonjurors. 59

It may be said perhaps, that the *Nonjurors* by refusing to take the Oaths, disown the Title of the Prince, and declare that they will not submit to his Authority, and so are discharged from their Allegiance.

To this I answer, that their refusing to take the Oaths, does not discharge them from their Allegiance, but only incapacitates them from holding some Places, and subjects them to such Penalties, as the Law has thought fit to impose upon them. But they have no way of being discharged from their Allegiance, but by going into another Country, and so refusing the Protection of the Government. 'For there is (saith my Lord Coke) 'a sort of reciprocal Contract betwixt 'the King and the Subject: In which the King promises on his part, to govern and protect his Subjects, 'and the Subjects on their part, to be faithful and obedient to their King. If therefore a Subject accepts of the Performance on the part of the King, he thereby implicitly consents to the Contract, and obliges himself to perform his Part. For a Subject to accept of the first, and yet to refuse the latter; is contrary to the common Rules of Justice, and the Reason of the Law in all Cases. It is an indisputable Maxim, both in Law and Equity, *Qui sentit Commodum, sentire debet & onus*. If therefore a Man acknowledges another to be his Tenant, by accepting Rent of him, he cannot afterwards refuse him. And *a fortiori* a Subject cannot refuse Allegiance, after he has accepted of Protection.

Besides, we are told by Coke, in the Case already cited, that for the reasons before alledged, even an *Alien*, so long as he continues in *England*, owes Allegiance to the Government: I will give you his own Words, 'There is (saith he) a local Protection on the King's part, and consequently a local Allegiance on the Subject's. And this appeareth in 4. *Mar. Bro.* 32. & 4. *Phil. & Mar. Dyer.* 144. A Frenchman being in amity with the King and Queen, came into *England*, and joyned with divers Subjects in Treason against the King and Queen. And the Indictment concluded *contra ligeantiae suae debitum*. 'For he owed to the King &c. local Obedience that is, so long as he was within the King &c.'s Protection: 'Where local Obedience tho' but momentary and uncertain,

* certain, is enough to make a natural Subject, and if
 * he hath Issue here, that Issue is a natural Subject.
 And to the same Purpose he quoted the Case of *Steph.
 Farrara de Gama, & Emman. Lewes Tinoco* adjudged
H. 36. El.

After this I think there can be no Dispute, but that
 every Nonjuror in *England*, owes at least *Local*, if not
Natural Allegiance to the Government, so long as he
 is content to live under it, and be protected by it. And
 therefore I most earnestly recommend it to all our
 conscientious Nonjurors, to consider what a high
 Crime they are guilty of, and how they act direct con-
 trary to the established Rules of Law, Reason and Gra-
 titude, and consequently of Religion also, whilst they
 endeavour upon a Pretence of Conscience to disturb
 that Government, under which they live, and by
 which they are protected.

C H A P. VI.

*Of the Hereditary Right of the Crown of En-
 gland, and in what Sense it is to be understood.*

THE History that I have given of the Succession is
 but one continued Argument, against the Heredi-
 tary Right of the Crown of *England*, in the Sense that
 my Author understands it, and therefore I shall be ve-
 ry short in this Chapter. That the Crown of *England*
 is *Hereditary*, is agreed by most Men; but they differ
 widely when they come to explain their Notion of
Hereditary Right. Some would have it to be *Jure Di-
 vino*, and so not to be defeated by any Human Autho-
 rity. Let these but shew me the Commission from Hea-
 ven, and I shall readily subscribe to them: Till then,
 I shall beg leave to look upon the Assertors of this Hy-
 pothesis, as little better than *Enthusiasts*. For should
 this Scheme take place, it must follow, that tho' one
 of these *Jure divino* Kings, be never so wicked, tho' he
 oppresses his People never so much, and tho' he has
 no Regard either for God or Man, but is for Sacri-
 ficing

sificing every thing to his own Lusts : Yet his poor Subjects must bear it with Patience, and Millions of Men much better than himself, must be content to part with their Liberties, their Estates, and even their Lives, rather than oppose his Divine Authority. Nay farther, if he should be turned out of his Kingdom by any Authority whatsoever, they must hazard all they have to restore him, and never submit to any Power whilst this Divine Person is in Being. As if the World was made for Kings, and Government instituted for no other Purpose, but to aggrandize one Family in a Nation. But how contrary is this Notion not only to the Nature and Design of Government, but to the Justice and Mercy of God?

The Advocates of the Patriarchal Scheme, either condemn the greatest Part of Mankind, as Rebels against their lawful Sovereign, or else discharge them all from paying Obedience to any one. For according to their Hypothesis, there can be but one Person in the Universe that has any Right to be a King. If it be known who that Person is, all but his Subjects are Rebels; if not, till *he* is found out, the whole World is in a State of Liberty, and whoever pretends to be a King, ought to be treated as a Tyrant and Usurper. A Doctrine highly promoting Loyalty, and fit to be encouraged by every Government!

Our Author's *Hypothesis* is (if possible) more ridiculous than these. For tho' in Opposition to the Power of Parliaments, he asserts that the Hereditary Right of the Crown is eternal and immutable; Yet he says that it may be barred by the Donation of a rightful King, by the Cession of a collateral Ancestor, nay even by a bare Supposition, and in short by any thing but an Act of Parliament. Most of these ridiculous Positions have been already sufficiently answered, and the rest shall be in the following Chapters. But as an excuse for our Author's seeming Absurdities, I shall observe that in settling his *Hypothesis*, 'tis plain he had no other Regard, but to advance such Notions, as would serve the Interest of a *particular Person*.

And now having shewn in what Sense the Crown of *England* is not Hereditary; I shall shew in what Sense it is so.

When

When I say that the Crown of *England* is Hereditary, I mean that it descends in the Royal Family, and to the eldest of that Family, unless his Right be barred by Parliament, or there be a legal Objection against him. That this is the Constitution of *England*, appears (as I have already shewn) from the Practice of all Ages, and Reason confirms this Practice.

Our * Author indeed says, that the Monarchies of *France*, *Portugal*, &c. are all Hereditary Monarchies, and that such is the Monarchy of *England*; as if all these Monarchies were Hereditary in the same Sense. How the Monarchy of *Portugal* came to be pitched upon (the Original of which is so well known) I own I cannot guess. From the Rules of Descent in *France* and *England*, it appears plainly that in both these Countries the Hereditary Right is not unalterable, but subject to the Laws of each Country. In *France* Females cannot inherit the Crown, whereas in *England* they may, so that a Person may be an Heir to the Crown in one Country, that cannot be so in the other. From whence it follows that the Hereditary Right in each Country, is a Creature of the Laws of that Country, because it is regulated by it. And that these Laws relating to the Succession of the Crown are in both Countries meerly humane, appears from an Argument of † *Hooker*; 'Laws (saith he) are meerly humane when the Matter of them is such as Reason doth but probably teach to be fit: One Example whereof may be this. Lands are by human Law in some Places after the Owner's Decease divided unto all his Children, in some all descendeth to the eldest Son.. If the Law of Reason did necessarily require one of these two; then the other would be unjust, and yet both are received, and no Law of Reason transgress.

From whence I argue thus.

The Laws relating to the Descent of the Crown are different in *France* and *England*.

Our Author is an Advocate for both these, and so owns that they are both received without transgressing

* P. 11.

† *Eccles. Polity* l. 1. s. 10.

sing the Law of Reason. The Consequence is that they are both meerly human. Since then the Hereditary Right of the Crown of *England* is plainly a Creature of the Law, and subject to a Law meerly human, it follows from Reason, as well as Practice, that the Legislative Power of the Nation have an Authority to limit and bind the Crown, and the Descent and Inheritance thereof.

C H A P. VII.

Of the Power of the Kings of England, to dispose of their Crown by Will.

THAT the Kings of *England*, have a Power to dispose of their Crown by Will, is very much insisted on by our Author, but the contrary shall be proved in this Chapter.

The Precedents by which our *Author* has endeavoured to support this Assertion; are,

First, a pretended Donation of the Kingdom to *William the Conqueror*, by the Will of *Edward the Confessor*.

Secondly, The Will of the *Conqueror*, by which he gives his Crown to his 2d Son *Rufus*.

Thirdly, A Will of King *Richard I.* by which (as 'tis pretended) the Crown was given to *John* his Brother.

But the Validity of each of these Wills has been * already sufficiently refuted: And it has been shewn that none of these Testamentary Kings (except the *Conqueror* who came in by Force) were permitted to take Possession of the Crown by Virtue of this Claim. It was never acknowledged by *Parliament*, nor were *John* and *Rufus* esteemed Kings, till they were formally elected by the Estates of the Realm without any Regard to their Testamentary Right.

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* Chap 3. of the Succession, &c.

Our † Author says farther, *That a Successor by Will, is an Heir in the Language of the Civil Law, and consequently he that claims by Will must certainly have an Hereditary Title, which no doubt is a good Title in England, where the Crown is acknowledged to be Hereditary.*

I shall readily admit this Argument to be of the greatest Weight imaginable: Because 'tis well known, that the *Civil Law* has been never received in *England*; and 'tis as well known that one who claims by Will, is never in our Law called an Heir, nor does he take by *Descent*, but by *Purchase*.

Our Author also in Confirmation of *Testamentary Right*, * quotes a Passage out of *Gul. Pistaviensis*; Where (as he pretends) it is asserted, ' That Kings ' may dispose of their Crown by Will: Because it hath ' been the constant Practice in *England* ever since ' the coming hither of *St. Austin*; That Donations ' made at the Point of Death were always held good ' and valid.

Now whether *Pistaviensis* says so or no, 'tis not to my Purpose to enquire; since the Reason that he goes upon is notoriously false, and consequently his Conclusion must fall of course. For Donations at the Point of Death were so far from being always held valid, That by the ancient Common Law of *England*, before the 32 *H. 8.* No Man by his last Will, could devise or dispose of any Estate of Freehold in Lands: They could not be transferred from one Man to another, but by Acts solemnly executed in the time of his Health, when he was capable of considering what he did. But when Men are at the point of Death, it is presumed that they are not at that time fit to be entrusted with the Disposition of their Lands. 'Twere endless to quote Cases to this Purpose. But I shall produce one Passage out of † *Glarvil de legibus Angliæ*, one of the most antient Books of the Law, where the reason of this is particularly set forth, *Licet generaliter cuilibet de terra sua rationabilem partem pro sua voluntate cuicunq; voluerit libere in vita sua donare. In extremis tamen agenti non est hoc cuiquam hactenus permis- sum quia possit tunc immodica fieri hereditatis distributio si fuisset hoc permissum illi qui fervore passionis instantis,*

¶

Memoriam & rationem amittit quod nonnunquam evenire solet, unde presumeretur, Quod si quis in infirmitate positus ad mortem distribuere cepisset hereditatem suam; Quod in sanitate sua minime facere voluisset; Quod potius proveniret illud ex furore animi quam ex mentis deliberatione.

And now having answered all my Author's Arguments in favour of this extraordinary Power of Kings, I shall shew that it is directly contrary to Law, and the Nature of the *English Constitution*.

It is contrary to Law, because (as I have already shewn) before the 32. H. 8. No man could dispose of his Lands by Will. ' And (as our * Author says, and ' as I have before observed) if the Law takes so much ' Care of the Rights of private Persons, that they ' have not Power to alienate their Properties by any ' Oaths, or Conveyances contrary to the customary ' Methods, and prescribed Forms: Certainly we are ' bound to believe; that the Titles of Princes, and ' Heirs to the Crown, are at least as strongly guarded. By the *English Constitution*; as our Author allows, And as he plainly proves from Judge Hale, The King cannot resign his Crown, without the Consent of Parliament. And much less can he give it away, either in his Life-time, or after his Death without the Consent of the same. And the Reason seems plainly to be this, because the Crown is but an Office of trust, and no one can resign an Office of trust but with the Consent of those Persons for whose Benefit he is entrusted with it. And *a fortiori* it may be argued, that he cannot devise it: For Offices of Trust are not devisable tho' a Man hath an Hereditary Right in them. There is a great Difference betwixt an Estate, and an Office, which those who assert that the Kings of *England* are such absolute Proprietors of their Crown that they can give it to whom they please, do not seem to have considered. An Estate may be entirely at a Man's own Disposal, But an Office never can, for no Man can have an absolute Interest in it, there being several particular Rules, which inseparably belong to every Office, according to the Nature of it: So a Judicial Office cannot be granted in Reversion, even by the King himself.

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But

But our Author (tho' he says that a King cannot resign his Crown without the Consent of the three Estates, and tho' he denies in as express Terms as he dares that the King and both Houses of Parliament, can give away the Crown from the next Heir yet) asserts confidently that the King himself by his last Will, or by Deed in his Life-time can give away the Crown to whom he pleases; which if true, the King can do more without his Parliament than with it. An excellent Foundation for arbitrary Government, but too absurd to need a Confutation!

But here I shall observe as a farther Proof that our Kings had never any such Power, that in the Reign of King *Henry VIII.* there are two (a) Acts of *Parliament* passed on purpose to give this Power to the King; And as from thence it may be strongly concluded that the Parliament were then of Opinion, that the King had no such Power before: So neither can it be thought that King *Henry* (who endeavoured to be as absolute as he could and would not depart from one tittle of his Prerogative) would submit to an Acceptance of a Power from his Parliament, which he had before in himself. Nay, the very wording of the Acts plainly shews that he had no such Power. The Parliament declare this to be an instance of the great trust and confidence, they repose in his Majesty's hearty love and fervent Affection to this Realm: And they expressly prescribe and limit the Manner and form of the Will, by which his Majesty may dispose of his Kingdom. The first of which had been no compliment, and the second not in their Power, if there be any thing in our Author's Assertion. I shall observe likewise farther, that in all the Disputes which arose afterwards about the Validity of this Will, it was never once pretended by the Advocates for it, that it was any farther of force, than as it was pursuant to the Directions of the Acts of Parliament.

Nay, *J. Hales* in that very Book written in Defence of King *Henry's* Will, quoted by our Author in his *Appendix*, and upon which he lays such great stress (b) expressly says, *That the Power of making such a Will was*
given

(a) 28 H. 8. & 35 H. 8. (b) *Appendix* p. 23.

Of the Antiquity and Power of Parliaments. 67
given to King Henry by the Statutes, which otherwise
by Law he could not do.

If after all, any one should be still of Opinion, that
the Kings of England are invested with such a Power,
I will not pretend to convince him of any thing.

C H A P. VIII.

Of the Antiquity and Power of Parliaments.

THE Author of the *Hereditary Right* being an
utter Enemy to *Parliamentary Entails*, endea-
vours to lessen the Authority of *Parliaments* by all the
Methods he can.

(c) In the first place he says, ' That there were no
' Parliaments before the middle or end of the Reign
' of *Hen. 3.*

(d) Secondly, ' That the Consent of a whole People
' is of greater value then the Consent of a Senate.

(e) Thirdly, ' That the three Estates of the Realm
' have no lawful Power to place a King upon the
' Throne.

(f) Fourthly, ' That the Inheritance, or the Descent
' of the Crown cannot be limited by Act of Parliament,
' such a Power being directly contrary to the Nature
' of our *English* Constitution.

This last Assertion being Treason by Law, least I
should be thought to misrepresent our *Author*, in a
Matter of this great Consequence, I will give you his
own Words at length.

'Tis true, (saith he) ' That Dr. *Higden* acknow-
' ledges in plain Words, that the Crown of *England* is
' Hereditary, and he denies it to be Elective; But
' what kind of Inheritance can he mean consistently
' with himself?

' First, He asserts that the Inheritance may be limited
' by Act of Parliament, this I will not dispute, But it
' follows, that this is an Inheritance which may be

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' taken

68 Of the Antiquity and Power of Parliaments

taken from one, and given to another, as often as the Parliament Pleases, which seems to be an Inheritance very different from what is usually understood by Hereditary Monarchy: For it is truly Elective, since the Parliament chuses, or may chuse the Successor always.

P. 11. He twice asserts *that the Crown of England is Hereditary*, and then goes on in the following Manner.

'The Doctor in his views could not avoid seeing evident Proofs, that the Crown of *England* was Hereditary, and therefore he acknowledged it verbally, and denied it really. He may understand Words as he pleases; But all other Writers of all Nations, and the Generality of all Men understand by an Hereditary Crown, a Monarchy entailed on one Family, and descending successively to the lineal Heirs of it. Such are the Monarchies of *France, Portugal, &c.* And all other Hereditary Dominions in the World: Such is the *English* Monarchy governed successively above 900 Years, by the same Royal Family. But if the most ancient Hereditary Family in the World hath not a true Right of Inheritance: If Prescription of 900 Years, is nothing against new Possessors, there is surely no Right of Government at all, nor any true Right of Inheritance, publick or private; But every thing is every Mans, and Right, Prescription, Property, are Sounds without Signification.

Again p. 12. 'The species of things are determined by their constant Nature, not by accidental Changes how frequent soever. There have been many Changes in the Succession of *England*, Armies have set up Kings, who had no Right of Inheritance, Parliaments have confirmed them, other Armies have de-throned, other Parliaments have attainted them, and have declared the Entails of Parliaments null, There have been divers Temporary Constitutions if so they may be call'd; But the Seeds of these Constitutions fell upon a Rock, forthwith they Sprung up and flourished, but because they had not root, they withered away, and none of them liv'd so long as to gain the Title of Prescription. One or Two grew up to Maturity and dyed, the rest perished in their Infancy. The Tree of Hereditary Right, hath been several times cut

Of the Antiquity and Power of Parliaments. 69

‘ cut down to the Ground ; but the Stump of the Roots
‘ in the Earth hath grown up again, and hath reached
‘ unto Heaven. The Kingdom hath been sure, and the
‘ Nation hath been convinced, That the Heavens do
‘ Rule. And again, n. 13. *He positively asserts, That*
‘ the Constitution of *England* is Hereditary.

I would not willingly misrepresent our Author ; But
I am afraid (though I must own he has expressed him-
self very cunningly) that he will be found upon Exa-
mination to have denied *that the Inheritance of the*
Crown of England, can be bound or limited by Act of
Parliament, and consequently to have been guilty of
High Treason without the help of *Innuendos*.

Whatsoever positively asserts Premisses from whence
a Conclusion does necessarily follow, as positively as-
serts that Conclusion, as if he had done it in express
Terms ; Wherefore I do affirm that in the Passages
that I have quoted the following Syllogism is contained.

‘ If the Inheritance of the Crown of *England* may
‘ be limited by Parliament, it follows that the Crown
‘ of *England* is not an Hereditary Monarchy in the
‘ Sense in which that Expression is usually understood ;
‘ Because it is truly Elective.

‘ But the Crown of *England* is an Hereditary Mo-
‘ narchy according as the Writers of all Nations, and
‘ the Generality of all Men understand that Expression.
The necessary Conclusion therefore is,

‘ That the Inheritance of the Crown of *England*
‘ cannot be limited by Parliament.

Which Conclusion is directly contrary to Law, and
which to maintain by writing or printing (as our Au-
thor has done) is High Treason.

There (g) are several other Places in his Book (too
long here to be inserted) in which he has taken great
pains to prove the Invalidity of Parliamentary En-
tails ; and to shew that the Parliament has no power
to limit the Succession of the Crown.

To our Author’s Argument against the Antiquity of
Parliaments, I answer that ’tis in vain to dispute about
Words ; That in reality there were such things as Par-
liaments called by that very name before the Reign of
Henry III. nay even before the Conquest, as appears

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70 *Of the Antiquity and Power of Parliaments*
 from the best (b) Authorities. But however this be,
 'tis plain from the Testimony of all Historians, that
 not only since the coming in of the *Normans*, but even
 in the time of the *Britons* and *Saxons*, The Nobles,
 the Clergy, and the People, which we now call the
 three Estates, had always a share in making Laws. In
 the time of the *Britons*, (as I have (i) observed be-
 fore) the Helm of Government was said to be in the
 People. And (k) *Tacitus* gives this Account of the
Germans, by whom this Nation was afterwards inhabi-
 ted *De minoribus principes, de majoribus omnes*. That
 things of lesser consequence were determined by the
 Nobles only; But things of the greatest by the whole Peo-
 ple. According to which Model we read in the time
 of the *Saxons*, of the *Micklemore* or *Wittagenmore* a
 Common Council consisting of the King, the Lords,
 the Clergy, and the Freemen, of which we have fre-
 quent Account in History. Within six Years after
Austins arrival (l) *Ethelred* called a Common Council,
nam cleri quam populi (m) *Ina* made Laws *suasu & insti-*
tuto Episcoporum omnium, senatorum & natu majorum
sapientum populi, in magna servorum dei frequentia. We
 read in a very (n) ancient Book of the Law, ' That
 ' King *Alfred* assembled his Counties, and ordained
 ' for a perpetual Usage, that twice in the Year, or oft-
 ' ner, if need were, they should assemble themselves
 ' at *London*, a *Parliament* for the Guidance of the
 ' People, &c. And from that time, to the time of *Ed-*
 ' ward I. many Ordinances were made in this Man-
 ' ner. There (o) are many more Instances of this
 kind, from which it appears, that though this Common
 Council of the Nation was not at first regulated in
 the same manner that it is now; Yet it is plain,
 that it continued without Interruption, till it grew at
 length to be what we now call a Parliament. (p) My Lord
Coke says, ' that there were in the Reigns of the Con-
 ' queror, *Henry I*, *Stephen*, *Henry II*, *John*, and *Henry III*.

280

(b) *Coke 1 Inst. f. 110. Where several very ancient Au-*
thors are quoted to this purpose. (i) Chap. 2. p. 8. (k)
Tacitus de Moribus German. (l) Concil. Britann. 126.
(m) Lambard. Leg. Angl. p. 1. (n) Mirror des Just.
Cap. 1. S. 3. (o) Lambard Leg. Angl. p. 36, 138.
Polydor. Virgil l. 3, (p) 1 Inst. f. 110. a.

Of the Antiquity and Power of Parliaments 71

280 Sessions of Parliament, and at every Sessions divers Acts of Parliament were made, no small number whereof are in Print. With this Authority I shall conclude this head.

Our Author's Assertion that the Consent of the diffusive Body of the People is of more value then the Consent of the Senate, hath already received a general Answer, and is of too little weight to deserve a particular Confutation. However he thought it might encourage the Mobile to rise, when they do not like the proceedings of a Parliament.

That the three Estates of the Realm have in some Cases a lawful Power to chuse a King for the Nation, He expressly owns in (q) one place, though he positively denies it in another. For he says, p. 271. *That upon the Extinction of the Royal Family, Subjects are at Liberty to chuse their King.* And by Parity of Reason, since the (r) Act of William III. If all the Royal Family should happen to become Papists, the Estates of the Realm would have the same Power. Since therefore he allows that in some Cases the Estates of the Realm must of Necessity have a Power to act without the King, all his Arguments against it are at an end.

My (s) Lord Herbert says that a Parliament can make and depose a King. And (t) Sir Tho. Smith in his Chapter of the Power of Parliaments, that *jus in regno succedendi prescribunt* which last whether or no it be allowed as an Authority that Parliaments without the King can limit the Succession of the Crown; Yet at least it will prove that the King and Parliament have such a Power; Which our Author denies in the fourth Place, and to which I shall not in this Chapter, give any particular Answer; Because the contrary hath been fully shewn already, and will be still farther confirmed by the Authorities in the following Chapter.

(q) p. 6, &c. (r) 1 W. Sess. c. 2. f. 2. (s) Hist. H. 8. p. 422. (t) De Rep. Angl. l. 2. c. 2.

C H A P. IX.

Of the Revolution, and the present Establishment of the Succession; shewing that they are founded upon the Principles of Justice, and the Fundamental Laws of this Kingdom.

THE Justice and Legality of the Revolution, and of every thing that followed thereupon, may be clearly demonstrated from the foregoing Chapters. But as there have been many Cavils made against it, so I think in a Matter of this Moment, I cannot be too particular.

It must be owned that our Monarchy is not absolute; Our Writers of all Sorts, entirely agree in this, and I believe no one will dispute it.

It then it be limited by the Laws of the Kingdom, To what purpose are such Limitations, if the King can break through them whenever he thinks fit? If this be so, we are in as bad a Condition, as though our Monarch was absolute. But perhaps I may be told he is obliged by Oath not to violate the Laws of the Kingdom by which his Power is limited. But surely the Conscience of a Prince is but a poor guard for his Subjects; And if they have nothing but his Oath to rely upon, they have but an indifferent Security. From a good Prince there is no danger, and a bad one will have no regard for his Oath.

Besides we may learn from the Examples of our Neighbours, how little Princes are bound by their Oaths, when their Subjects will tamely sit down without contending for their Liberties.

It is a jest to tell us of our Constitution, and that we are the happiest People in the World, in having our Liberties and Properties secured to us; If we are liable to lose them all whenever a designing Prince shall think it his interest to take them for us.

But without putting any more Absurdities, I shall venture to assert that every limited Monarchy is bound
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by its Limitations. And that the People have the same Right to their Liberties, as the Prince has to his Prerogative. That it has been always thought so in this Nation, will appear from the following Instances.

(a) *Sigebert* King of the *West-Saxons*, having broken thro' all the Laws, was admonished by *Cumbra* one of his Earls to govern his People in a more equitable Manner. But notwithstanding he grew more Tyrannous, and sentenced this his faithful Councillor to an ignominious Death. Upon which the Nobility and Commonalty assembling, after a due Consideration of what was proper to be done, thought fit to depose him, and elected *Kineulf*, one of the Royal Line, King in his stead. Not long after this (b) *Beornred* King of the *Mercians*, met with the same Misfortune, for he refusing to govern according to Law, and exercising an Arbitrary Tyrannical Power, was deposed by the unanimous consent of his Nobles and People: And *Offa* was thereupon elected King. (c) And in less than 70 Years after, *Ceolulph* one of his Successors was in like manner deposed. To these Instances out of the *Saxon* History, it will not be improper to shew the Behaviour of our Ancestors, under their *Norman* Kings, whenever they attempted to destroy their Liberties.

Tho' *William* the Conqueror confirmed the Liberties of the People by an Oath, yet he afterwards endeavoured to break in upon them. Upon this the *English* openly espoused the Title of *Edgar Atheling*, and raised an Army against him; but he knowing that the true Occasion of this Revolt was his Oppression of the People found it absolutely necessary to restore them to their ancient Liberties, upon which the Title of *Edgar* was dropped, and they presently returned to their Allegiance.

The same course they took with his Son *Rufus*, for tho' he pleaded his Father's Will as his Title, they refused to admit him for their King, till he had sworn to observe their Laws.

And afterwards his Brother *Henry*, by confirming to them their Liberties, obtained the Crown by no other Title than what they gave him.

So

(a) *Matt, Westm.* p. 274. (b) *Id.* p. 265. (c) *Id.* p. 299.

74 *Of the Revolution, and the present*

So that all Pretences whatsoever were forced to give way to that chief Consideration, the Liberty of the People.

Stephen though not next of Blood, yet succeeded upon his taking the same Oath, and afterwards upon his breaking it, and not before, the People took part with *Maud*. *Stephen* was worsted in this Contention, and *Maud* thereupon was recognized by the States: But she afterwards refusing to confirm the Priviledges of the People they rendred back their Homage, forcing her to fly from * *London*, and to leave her Rival in Possession of the Crown.

John who was the next Prince that refused to govern according to the Laws, met with nothing but Opposition throughout his whole Reign.

His Son *Henry III.* felt also the effect of breaking in upon the Liberties of the Nation, for which he was more then once reduced to the last Extremities.

The next Kings that trampled under Foot the Laws of the Kingdom, were *Edward II.* and *Richard II.* What their fate was, every one well knows; And 'tis remarkable that when the Lords and Commons sent to the latter at *Eltham*, they claimed a Power of deposing bad Princes by Virtue of an ancient Statute; By which without doubt they meant the †† 17th Law of *Edward the Confessor* (all whose Laws were afterwards confirmed by *William the Conqueror*) In which Statute after summing up the Office of a King, it is declared that if a Prince will not conform himself to his Duty, *nec nomen Regis in eo constabit*: The Duty of a King is further declared in the same Statute as follows, *Debet etiam Rex omnia rite facere in regno, & per judicium Procerum Regni Debet enim jus & justitia magis regnare in regno quam voluntas prava. Lex est semper quod jus facit; voluntas autem, violentia, & vis, non est jus.*

Henry IV. knew to whom he ow'd his Title, and therefore was very tender of that Power which gave him his; but his Grandson *Henry VI.* suffering his Courtiers to oppress the People, a new Title of Birthright was rais'd up against him; though that
Title

* Peerage of England, p. 133.
Angl. p. 142.

†† Lambard's Leg.

Establishment of the Succession. 75

Title would probably have never been thought of, had the Peoples Liberties been preserv'd : So that tho' the Birthright of *Edward IV.* was the pretended Title that was set up against him; the true Reason for which the People fell from him was his Negligent Administration; and his suffering evil Counsellors to encroach upon the Liberties of the Kingdom.

For afterwards when the House of *York* assum'd too much Power to themselves, the Nation ceas'd to adhere to it; and by that means *Henry VII.* gain'd the Crown, tho' he had no Title of Birthright even from the *Lancastrian* Line.

'Tis needless to enter into the particulars of the following Reigns, because after this no Prince till very lately pretended to be above the Laws.

From these Instances it appears plainly, That both before and since the Conquest, it has always been held as a fundamental Law, and inseparable from the *English* Constitution, That the King might be guilty of such Abuses of his Power, as amounted to a forfeiture of his Crown; and that in such extraordinary Cases the Estates of the Realm might Assemble themselves together, and choose another in his stead.

And now let us consider, whether or no King *James* was not guilty of such Abuses of his Power, and consequently whether there were sufficient Reasons to justify the Revolution.

The * *Mirror of Justices*, (a Book that I have cited before) mentions amongst many others two great Abusions of the Law: The first, *When the King attempts to set himself above the Law, whereas he ought to be subject to it.*

The second, *When the King holds Parliaments but very seldom, whereas they ought to be held twice a Year in London; and takes upon him to make Ordinances, which ought not to be made without consent of his Parliament.*

76 *Of the Revolution, and the present*

Of both these, and many more Abusions King *James* was notoriously guilty : He declared that he was above the Law, nay, that he could dispense with all Laws : And if a King can dispense with Laws, for the same Reason he can make new ones ; and if he could get that Power, he would have no farther occasion for Parliaments.

He committed and prosecuted divers worthy Prelates, for humbly Petitioning to be excused from concurring with his assum'd Power of dispensing with the Laws.

He took upon him to Levy Money by pretence of Prerogative, in other manner than it was granted by Parliament.

He rais'd and kept up an Army without the consent of Parliament.

He did not suffer the Parliament to sit from the 20th of *November* 1685. till the time of his *Abdication*, contrary to the known Laws of this Kingdom ; and in particular to the plain intent of the 16 *Car. 2. c. 1.* Indeed upon the first Rumour of the *Prince of Oranges* Landing, he Issued out Writs for a new Parliament ; but as soon as he fancy'd, or was made to believe that there was no Danger from him ; the Writs were immediately recall'd.

He endeavour'd by illegal Methods, and by spiriting up Prosecutions upon the Evidence of *Papists*, to garble all the Corporations in *England*, and entirely to disfranchise some of them.

He attempted by arbitrary and illegal Courses, to turn Men out of their just Possessions.

Nay, he unjustly deprived a whole Society of their Free-holds ; and tho' the Bishop of *Winchester* upon the News of the *Prince of Oranges* Landing, was sent down to *Oxford*, to restore them ; yet he was recall'd upon that Report's being contradicted.

And at last when the *Prince of Orange* Landed, King *James* was even then so far from giving us any hopes that he would make Satisfaction to the Nation, and govern better for the future ; that he endeavour'd to put every thing into Confusion, by running away out of the Kingdom, and throwing the great Seal into the River,

To theſe Abuſes, and many more of the ſame ſort, I may add, that *King James* was a *Papiſt*, and ſo altogether unfit to be the Governor of a Proteſtant Kingdom. He was obliged by the Principles of his Profeſſion, to *deſtroy our Laws, our Liberties, and our Religion, under pain of eternal Damnation*: and he endeavour'd as much as he could to aſt up to his Principles.

If therefore ever any Prince can be ſaid to have forfeited his Kingdom, *King James* certainly did; for 'tis almoſt impoſſible that any one ſhould be guilty of more notorious Breaches of the Law.

The Lords therefore and Commons had very good Reasons to juſtify their Proceedings at the Revolution; they had the practice of all Ages on their ſide; and the Circumſtances of the Caſe were more extraordinary than any that had ever happen'd before; and if they had not acted as they did, every thing muſt have run into Anarchy and Confuſion. To prevent which, after a long and ſerious Debate; they reſolv'd that the Throne was vacant, and that *William* and *Mary* Prince and Princeſs of *Orange* be declar'd King and Queen of *England*, &c.

The only Objection that can be made is, that this Aſſembly was not a Parliament, becauſe not call'd by the Kings Writ: But this Objection is of no weight: For tho' the ordinary way of calling Parliaments is by the Kings Writ; Yet that is not abſolutely neceſſary, at leaſt they are the Eſtates of the Realm, without their being ſo call'd. The five laſt Kings before the Conqueſt, and the four firſt after were elected by the three Eſtates; and they could not grant Writs for ſuch Meetings, becauſe they were not Kings till after they were ſo elected; The ſame may be ſaid of *John*, *Henry III.* *Edward III.* *Henry IV.* and *Richard III.* and 'tis remarkable, that one Reaſon alledged by *Bagots* Council, why *Henry VI.* was not an Uſurper, was becauſe the Crown was entail'd upon him by Parliament, which is a plain implication that the 1ſt Parliament of *Henry IV.* was good, tho' it wanted a legal Summons; for if that Parliament which was the Foundation upon which the Title of *Henry IV.* was built was illegal, for the ſame reaſon all the reſt as depending upon a falſe Foundation were alſo illegal, and indeed no Parliaments at all.

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Nay, we have a Law nearer our own Times, by which it is allowed that Parliaments may meet upon extraordinary Occasions, without the Formality of the Kings Writ: For in 13 *Car. 2. c. 7* The meeting of the Lords and Commons upon the extraordinary Exigency of the King's Restoration, is declared to have been necessary. And tho' the Parliament did confirm several of the Acts of that Meeting; Yet 'tis well known that the Validity of them was allowed of by all the Judges before such Confirmation.

It being therefore proved that the Lords and Commons may assemble themselves upon Cases of Necessity, without the King's Writ; No one can doubt but that it was lawful for them, nay, that it was their indispensable Duty to take care of the Nation. And in truth, unless it had been preserved by Miracles; it must have been ruined, if they had not interposed.

In short as the Prince of *Orange* was our deliverer, and without him we must have been infallibly ruined; So it may seem, that upon this principle (as Lands recovered from the Sea, by the Civil Law belong to the Recoverer) he had a good Right to be our King. Besides, he was married to the next Heir, and was himself the next but one after her, and that one by a Cession of her Right (upon our Author's own Principles) had made his Title compleat. And as an Addition to all these Titles he had the best of all, namely a Parliamentary one.

In all the other Parts of the Settlement, the Estates kept as close as possible to the ancient Rule of Succession. And by Virtue of that Settlement, Her present Majesty Possesses the Crown, and the People continue to enjoy their ancient Laws and Liberties.

'Tis needless to spend time in Justification of these Acts, by which the Succession after her Majesty and the Heirs of her Body, is settled on the Illustrious House of *Hanover*. The Author of the *Hereditary Right* acknowledges, that a King alone might formerly settle the Succession on whom he thought fit. How much more then may a King with the Consent of the Estates of the Realm? By the 13 *Eliz. c. 1*. It is declared that the Queen and Parliament can make Laws sufficient to limit and bind the Succession, and it is made by that Act High-Treason to affirm the contrary. So that

that in this Case, we have the strongest Authority that can be on our side. In this Settlement the Right of Primogeniture is considered as far as is consistent with the Safety of this Church and Nation. Whoever therefore has the least Regard for these, must acknowledge that this Settlement was necessary, just, and legal, as being agreeable to the Rules of our Law, being made by Persons that had an undoubted Authority, and being founded on that most excellent Principle, *the securing us from Popery and Slavery*; In which I hope we all agree, however we may differ in other Matters.

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The Conclusion.

THERE are some, Who if you do but mention the *Pretender*, will immediately answer, that they are not at all afraid of him, and that there is no Danger of his coming : But unless they mean that they are not afraid, because there would be no Danger if he did, I know not in what Sense they are to be understood. Otherwise, whence can their Security arise? Not from their natural Temper ; for I have known these very same Men (if you would take their own Words) extremely apprehensive of the Danger of the Church, when there has been less occasion to be so. In the Year 1708. Men of as much Courage as they, were so silly to be afraid of the *Pretender*. Nay, her Majesty in her Speech to the *Parliament*, plainly declared that there was then good Reason to be afraid. And what I pray has happened since, that should so entirely free us from the like Apprehensions? Has the *Pretender* fewer Friends in *England*, or are they at present less able to assist him? Is the *French King* in worse Circumstances, or is his Word a sufficient guard against his Power? Have we any Assurances that the *Pretender* has resolved for the quiet of these Nations to give us no more Disturbance? Has he entirely dropp'd his Claim, tho' he pretends to have changed his Religion? And is it then purely out of Conscience, and not at all out of Interest, that he declares he is turned Protestant? I wonder on which of all these Considerations, the Security of her Majesty's Government, and the Protestant Succession is founded. If upon none, I am sure on the other hand there is still good Reason to be afraid. The Representatives of one Nation have already declared their Opinion : And 'tis probable that those of the other (as soon as they sit to do business) will

will concur with them in their Apprehensions of the great danger of the Pretender? Have not *We* too, *Estates, Liberties, and a Religion* to lose? *All which* (as her * Majesty has told us) *must be for ever irrecoverably lost, if the Designs of a Popish Pretender, bred up in the Principles of the most arbitrary Government, should ever take place.*

The Author of *The Hereditary Right* (were there no other cause) has given us at least some reason to be afraid. For to what Purpose is his Book? Plainly to overthrow the present Establishment, and make way for the Pretender.

I have shewn what great Pains he has taken to prove the Invalidity of Parliamentary Entails, and that all our Kings were but meer Usurpers, unless they had the Right of Primogeniture; or at least a Testamentary Right to the Crown. Had he been able to maintain those Points, he well knew it must necessarily follow, that *William III.* our late glorious Deliverer, having neither of these Titles was an Usurper, and that consequently by his Way of arguing, all the subsequent Settlements of the Crown are in themselves meer Nullities. For such (as he says) are not only all Acts made by an usurping Power, but likewise all Acts by what Power soever they are made, if to the Prejudice of the next Heir. The first of these two Assertions, is directly levelled against her Majesty's Title, and against all King *William's* Acts of Parliament, by which Papists are excluded from the Succession, and the Crown settled upon the next Protestant Heir: And both of them directly tend to destroy the Title of the House of *Hanover*.

Nay, further to deter Men from doing their Duty, in opposing the pretended rightful Heir: † He endeavours to maintain, that Treason may be committed against such a one, as soon as he has made his Entry upon any part of the Kingdom, tho' another be in actual Possession of the Crown.

'Tis plain therefore what his Design is: And should this blessed Design take Effect, it follows from his own

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* Speech to the Parliament Apr^l 1. 1708. † p. 179.

*Arguments; That all Noblemen made since the Revolution would be degraded; all the Bishops deprived; all the Presentations to Benefices voidable; all the Judicial Proceedings revers'd; all Charters of Privileges, and all Grants from the Crown, of Lands, Pensions, or any thing else, would be esteem'd of no Validity; nay, all our Acts of Parliament (especially such, as are any ways to the Prejudice of the right Heir) would be *ipso facto* determined, and consequently all our Parliamentary Securities, must of course sink at once.

We see what an excellent Platform is laid, to make us a *glorious* and a *flourishing Nation*; And can any Man of Sense that considers this, be so deceived as to think it his Interest to endeavour to overturn the present Establishment?

And now having shewn the Weakness of our Author's Arguments, and the dismal Design of them; Having proved that the Revolution, and the present Establishment of the Succession are founded upon Prescription, Reason, Law and Necessity; I doubt not but every honest Englishman will be ready to stand by her Majesty, and the Illustrious House of *Hanover* to the last Drop of his Blood. And as it has hitherto pleas'd God to preserve us against all our Enemies; so (unless we are shamefully wanting to our selves) We may rest assured that he will still do so; and that by continuing his Favour to us, he will give us a farther Proof of the Justice of our Cause.

* p. 136.



FINIS.

ERRATA.

Introdult. p. 5. l. 4. for *thy* r. *they* p. 16. l. ult. for *In* r. *It*
p. 11. l. 21. for *a of* r. *of a*. p. 58. l. ult. for *the* r. *they*.
p. 60. l. 12. for *direct* r. *directly*.

